

CHRISTOPHER STONEMAN,)
)
Plaintiff,)
)
v.) Case No.
) 4:21-CV-00061-SRB
)
NIM TRANSPORTATION, LLC,)
and JAMES J. AJELLO,)
)
Defendants.)
)

REMOTE VIDEO DEPOSITION OF STEVEN R. GRABOFF, M.D.
Taken on Behalf of Defendants
Wednesday, October 27, 2021

Exh E

STEVEN R. GRABOFF, M.D.

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1 IN THE UNITED STATES DISTRICT COURT	1 Wednesday, October 27, 2021 11:27 a.m.
2 FOR THE WESTERN DISTRICT OF MISSOURI	2
3 AT KANSAS CITY	3 VIDEOGRAPHER: We're now going on the
4 CHRISTOPHER STONEMAN,)	4 record. Today's date is October 27th, 2021. The
5)	5 time is 11:27 Central Standard Time. This is the
6 Plaintiff,)	6 videotaped deposition of Dr. Steven R. Graboff in the
7)	7 case of Christopher Stoneman versus Norfolk Iron and
8 v.) Case No.	8 Metal, et al., Case No. 4:21-CV-00061-SRB in the
9) 4:21-CV-00061-SRB	9 United States District Court for the Western District
10)	10 of Missouri.
11 NIM TRANSPORTATION, LLC,)	11 Would counsel please state their appearance
12 and JAMES J. AJELLO,)	12 for the record?
13)	13 MR. THOMPSON: James Thompson on behalf of
14 Defendants.)	14 the plaintiff, Christopher Stoneman.
15	15 MR. LESTER: Michael Lester on behalf of
16	16 defendants.
17	17 VIDEOGRAPHER: Would the court reporter
18	18 please swear in the witness, with stipulation.
19	19 COURT REPORTER: The attorneys
20	20 participating in this deposition acknowledge that I
21	21 am not physically present in the deposition room and
22	22 that I will be reporting this deposition remotely.
23	23 They further acknowledge that, in lieu of
24	24 an oath administered in person, I will administer the
25	25 oath remotely.

<p style="text-align: right;">6</p> <p>1 The parties and their counsel consent to 2 this arrangement and waive any objections to this 3 manner of reporting. 4 Please indicate your agreement by stating 5 your name and your agreement on the record. 6 MR. THOMPSON: James Thompson on behalf of 7 the plaintiffs. We agree with that format. 8 MR. LESTER: Michael Lester on behalf of 9 defendants. We also agree. 10 11 STEVEN R. GRABOFF, M.D., 12 called as a witness by the defendants, having 13 been duly sworn, testified as follows: 14 15 EXAMINATION 16 BY MR. LESTER: 17 Q. Good morning, Doctor. Could you please 18 state your name for the record? 19 A. I'm Dr. Steven Graboff. 20 Q. And -- 21 MR. THOMPSON: I don't mean to interrupt 22 you, but just for the record, the plaintiffs 23 incorporate, rather than a lengthy objection, we 24 incorporate the objections filed to the notice for 25 Dr. Graboff's deposition for the reasons set forth in</p>	<p style="text-align: right;">8</p> <p>1 Q. Well, that's funny because that's what my 2 statement was about. 3 So we're taking this deposition over Zoom. 4 That's going to lead to some communication issues as 5 we go. I would just ask that any time you don't 6 understand a question, whether because I asked a bad 7 question or because a technology failure, please let 8 me know and I'm happy to restate or rephrase. Okay? 9 A. Sure. 10 Q. You understand that you're here today 11 because you've been identified as a retained expert 12 on behalf of Christopher Stoneman, correct? 13 A. Correct. 14 Q. What did you do to prepare for this 15 deposition? 16 A. I reviewed the materials that I was sent to 17 review on the case initially. I reviewed my file and 18 my report. 19 Q. What documents do you believe are in your 20 file? 21 A. So these are all of the documents. They're 22 all on these CDs here, which I'm sure Mr. Thompson 23 has. But the documents that are in my file, I have 24 outlined every single document, starting with my 25 report of June 14, 2021. So they're all listed</p>
<p style="text-align: right;">7</p> <p>1 our pleading. 2 MR. LESTER: Okay. 3 BY MR. LESTER: 4 Q. Dr. Graboff, could you please state just 5 where you're physically located right now? 6 A. I am located in Gardnerville, Nevada. 7 Q. And what's the address? 8 A. 521 Mottsville Lane, Gardnerville, Nevada 9 89460. 10 Q. Is that your home address? 11 A. Yes. 12 Q. Is anybody else in the room with you 13 currently? 14 A. Nope. 15 Q. I think you've done more depositions than I 16 have, so I'm not going to waste any time going over 17 the... (unintelligible). 18 COURT REPORTER: Mr. Lester, I think you 19 froze. 20 VIDEOGRAPHER: We're now going off -- 21 BY MR. LESTER: 22 Q. ... and I'm happy to repeat or rephrase the 23 question. 24 A. Yeah, you froze at the beginning of your 25 statement, so we didn't hear any of it.</p>	<p style="text-align: right;">9</p> <p>1 there. Every document, every radiologic study, 2 everything's itemized there. The only thing that's 3 not listed there is some radiologic studies I 4 received -- or maybe they are listed there. Let's 5 see. Yeah, they're listed there. Everything is 6 listed on that report. 7 Q. Okay. Is it fair to say that when you say 8 your file, what you are talking about is the medical 9 records and radiology scans that you reviewed in this 10 case? 11 A. No. My file contains more than just that. 12 Q. Okay. What are the non-medical records 13 that you have in your file? 14 A. There's some correspondence in my file. 15 There is some handwritten notes that I took when I 16 was reviewing the file or the case. There's some 17 dictated notes which were incorporated into the 18 report, but nevertheless they're separate documents 19 in the file. 20 Q. Okay. Have you ever spoken to 21 Mr. Stoneman? 22 A. No. 23 Q. Have you ever performed any type of medical 24 examination of Mr. Stoneman? 25 A. No.</p>

<p style="text-align: right;">10</p> <p>1 Q. Did you ever talk to any of his doctors or 2 providers? 3 A. No. 4 Q. Did you ever look at any photographs of the 5 accident scene? 6 A. No. 7 Q. If Mr. Stoneman was in a line-up, could you 8 pick him out? 9 A. No. 10 Q. The last entry in your testimonial history 11 is the April 9th, 2021 deposition in the Debra Straws 12 lawsuit. As I'm sure you recall, I took that 13 deposition. Or maybe you do, maybe you don't, but 14 that was me. Have you given any other depositions 15 since April? 16 A. No. 17 Q. Is it fair to say that all of the testimony 18 you gave me in the Debra Straws case about your 19 qualifications, background, experience, work history, 20 is still going to be true and up-to-date? 21 A. Yes. 22 Q. All right. I'm going to run through some 23 of it quickly, but since we did all that just a 24 couple months ago, I'm going to try to speed it along 25 and not dwell too long. But if at any point in time</p>	<p style="text-align: right;">12</p> <p>1 was for the last few years when you were working in 2 the clinic before retirement, about 40 percent of 3 your work was medical legal work; is that correct? 4 A. Correct. 5 Q. And that in total in your career, you have 6 a gross revenue of over \$10 million from your time 7 spent as a medical legal expert? 8 A. Was that my entire career? 9 Q. Yeah. 10 A. Correct. 11 Q. Where did you first go to medical school? 12 A. University Autonoma de Guadalajara, Mexico. 13 Q. Why didn't... (unintelligible). 14 COURT REPORTER: You've frozen again, 15 Mr. Lester. 16 THE WITNESS: I think the question was why 17 did I not go to an American medical school? 18 MR. LESTER: Correct. Just -- is that -- 19 can everybody hear me again? 20 MR. THOMPSON: Why don't you repeat the 21 question, Michael, because -- 22 MR. LESTER: Yeah, no problem. I just 23 wanted to make sure Connie -- wanted to make sure I 24 was back. 25 //</p>
<p style="text-align: right;">11</p> <p>1 I get anything wrong, obviously, please let me know, 2 okay? 3 A. Yes. 4 Q. Fair to say that in the last 20 years, you 5 have not performed any type of research or put forth 6 any peer-reviewed medical articles or research either 7 individually or as part of a group? 8 A. Correct. 9 Q. When was the last time you performed 10 surgery? 11 A. December 2004. 12 Q. So as of today, it's been approximately 16 13 years since the last time you performed any type of 14 surgery? 15 A. Correct. 16 Q. When was the last time you saw a patient? 17 A. December 2017. 18 Q. That's when you essentially retired your 19 clinic? 20 A. January of 2018 is retirement date, so 21 yeah, correct. 22 Q. So as of today, it's been approximately 23 four years since the last time you saw a patient? 24 A. Correct. 25 Q. My understanding from the last deposition</p>	<p style="text-align: right;">13</p> <p>1 BY MR. LESTER: 2 Q. Why didn't you go to an American medical 3 school originally? 4 A. The question is: Why did I not go to an 5 American medical school originally? 6 Q. Sorry. Let me just rephrase. I'll start 7 over. 8 A. You keep breaking up. 9 Q. Yeah, I don't know why. My internet's 10 usually been good. I guess it's the storms in the 11 area. 12 So could you repeat, what's the first 13 medical school you went to? 14 A. The first one was University Autonoma de 15 Guadalajara, Mexico. 16 Q. And what years were you there? 17 A. I was there from 1974 through the first 18 three months of 1978. 19 Q. Why did you go there instead of an American 20 medical school? 21 A. I applied here in the States and I was not 22 accepted, and I wanted to be a medical doctor, so I 23 decided to take whatever path I needed to get to my 24 destination, which was to become a doctor. 25 Q. Fair to say I think 10 American medical</p>

<p style="text-align: right;">14</p> <p>1 schools rejected you before you went to that school 2 in Mexico? 3 A. Yes. 4 Q. When you ultimately graduated from medical 5 school, did you become board-certified in any field? 6 A. When I graduated from the University of 7 California, Irvine School of Medicine, I did a 8 residency in orthopedic surgery and became 9 board-certified as an orthopedic surgeon. 10 Q. Okay. And just walk me through just -- I 11 know it already, but walk me through a little bit 12 what your practice was like and what field -- what 13 your general clientele was? 14 A. I clinically practiced orthopedic surgery 15 from 1985 through 2017, end of 2017, even though I 16 stopped doing surgery after 20 years in 2005. My 17 practice consisted of seeing general orthopedic 18 surgical patients. I was also on emergency backup 19 call as an orthopedic surgeon for about five hospital 20 emergency rooms in the area. At the time, I was 21 living in Southern California where my practice was. 22 And I did general orthopedics, I did trauma, I saw 23 and treated all kinds of orthopedic surgical 24 problems. I had an office-based practice where I saw 25 patients, I did surgery during the week, I did spine,</p>	<p style="text-align: right;">16</p> <p>1 exam on the first two attempts. It took the third 2 attempt to pass for recertification. 3 Q. So is that in roughly 2007? 4 A. Correct. 5 Q. And that would have been three years after 6 you stopped performing surgeries; is that fair? 7 A. Well, I stopped in 2005. 2007. That would 8 be two. 9 Q. Okay. Are you currently certified by any 10 medical board? 11 A. No. 12 Q. Why not? 13 A. Well, I retired in 2018, and I didn't feel 14 that there was a need to continue my board 15 certification at that time. I wasn't on hospital 16 staff anyplace and I didn't need to spend the money 17 for recertification. And it just didn't have any 18 purpose any further. 19 Q. How long has your board certification been 20 expired? 21 A. I let it lapse in 2018. It was up for 22 renewal in 2018. I'd just retired, so I didn't renew 23 it. 24 Q. You talked... (unintelligible). 25 COURT REPORTER: You're frozen.</p>
<p style="text-align: right;">15</p> <p>1 trauma, reconstructive surgery, joint replacement 2 surgery, pediatric orthopedics, fracture care, nerve 3 tendon repairs, hand, foot, ankle. Pretty much every 4 aspect of orthopedic surgery. 5 Q. Have you ever been board-certified in any 6 field other than orthopedic surgery? 7 A. I eventually became -- the answer is yes. 8 I eventually became board-certified as a forensic 9 physician. But other than that, no. 10 Q. We'll talk about that here in a second. 11 With respect to your orthopedic surgery board 12 certifications, have you ever attempted to recertify? 13 A. Yes. 14 Q. Did you ever have any issues or fail to 15 recertify? 16 A. So, two questions there. Let's see. First 17 question -- I forgot what the first question was. 18 But yes, I did recertify. 19 Second part of your question, did I ever 20 have any trouble recertifying? At one point, I did, 21 yes. 22 Q. And what was that issue? 23 A. So I recertified after the first 10 years 24 with no problem. And then 20 years later when I was 25 recertifying for the second time, I didn't pass the</p>	<p style="text-align: right;">17</p> <p>1 BY MR. LESTER: 2 Q. You talked about the other board 3 certification... institute? 4 A. I'm sorry, you froze up there. 5 Q. I'm going to quit out and rejoin and see if 6 that helps. I'll be right back. 7 VIDEOGRAPHER: We're now going off the 8 record. The time is 11:42. 9 (Recess) 10 VIDEOGRAPHER: We're now going back on the 11 record. The time is 11:43. 12 BY MR. LESTER: 13 Q. Dr. Graboff, we just took a break to see if 14 I could get my internet sorted out. 15 But I wanted to move over to your other 16 certifications that we were discussing right before 17 the break. It's my understanding that you are 18 certified through the American College of Forensic 19 Examiners Institute and the American Board of 20 Forensic Medicine; is that true? 21 A. Correct. 22 Q. And those are two sister companies. The 23 American College of Forensic Medicine operates sort 24 of under the umbrella of the American College of 25 Forensic Examiners, correct?</p>

<p style="text-align: right;">18</p> <p>1 A. Correct.</p> <p>2 Q. And both of those entities were founded by</p> <p>3 Robert O'Block, I believe we discussed last time?</p> <p>4 A. Yes.</p> <p>5 Q. You would have no reason to dispute that</p> <p>6 O'Block's personal background and history was in</p> <p>7 criminal justice, correct?</p> <p>8 A. I think that's correct.</p> <p>9 Q. And you would have no reason to dispute</p> <p>10 that the American College of Forensic Examiners was</p> <p>11 originally founded as a handwriting certification</p> <p>12 course because Mr. O'Block was rejected from other</p> <p>13 handwriting certification courses?</p> <p>14 MR. THOMPSON: Objection. Asking this</p> <p>15 witness to guess and speculate. Lacks foundation.</p> <p>16 MR. LESTER: I'm asking if he has any</p> <p>17 reason to dispute that background.</p> <p>18 BY MR. LESTER:</p> <p>19 Q. If you have personal knowledge otherwise,</p> <p>20 please feel free to tell me.</p> <p>21 MR. THOMPSON: Well, first of all, that's</p> <p>22 an inappropriate question, asking him to -- where you</p> <p>23 state a fact about unrelated issues, and then ask him</p> <p>24 to comment thereupon in the sense of he doesn't have</p> <p>25 any information to dispute it. It lacks foundation,</p>	<p style="text-align: right;">20</p> <p>1 first sentence of your report that you're certified</p> <p>2 by the American Board of Forensic Medicine and the</p> <p>3 American Board of Forensic Examiners. So I'm just</p> <p>4 trying to understand what your knowledge is about how</p> <p>5 they certify people and what their certification</p> <p>6 process is. What did you personally have to do to be</p> <p>7 certified by those two boards?</p> <p>8 A. So when I joined those boards and when I</p> <p>9 joined that college, the medical director at the time</p> <p>10 was a very well-known forensic pathologist named</p> <p>11 Dr. Cyril Wecht. His last name is spelled W-e-c-h-t.</p> <p>12 The name may be familiar to some people. He was</p> <p>13 involved with the O.J. Simpson trial. He was</p> <p>14 involved in looking into the JFK assassination, and</p> <p>15 other things. He was the medical director at the</p> <p>16 time and set the standards for which physicians could</p> <p>17 be certified by the American College of Forensic</p> <p>18 Examiners as being board-certified by them in</p> <p>19 medicine as well as forensic examination. And what</p> <p>20 he required of me was that I submit to him -- I</p> <p>21 believe it was 10 full cases -- that were redacted</p> <p>22 for personal information about the person involved --</p> <p>23 but full cases of my file, my analysis, my opinions,</p> <p>24 my testimony, whether it be in depo, depo and trial,</p> <p>25 or just trial, and he and the medical board at the</p>
<p style="text-align: right;">19</p> <p>1 and it's objectionable for that reason.</p> <p>2 BY MR. LESTER:</p> <p>3 Q. Okay. You can answer, Doctor.</p> <p>4 A. I don't know the answer to that question.</p> <p>5 Q. I believe we discussed last time that</p> <p>6 Mr. O'Block is currently dead, and you believe there</p> <p>7 was some issue surrounding that. Do you recall that</p> <p>8 testimony or that conversation?</p> <p>9 A. I think I know that he died, yes.</p> <p>10 Q. Do you know any facts about his death?</p> <p>11 A. I do not.</p> <p>12 Q. Do you have any reason to dispute that it</p> <p>13 was a murder/suicide with his girlfriend who was 40</p> <p>14 years younger than him?</p> <p>15 MR. THOMPSON: Objection. You know, what</p> <p>16 is this? Just a game of salacious crap that you</p> <p>17 throw out here, Michael? It's not going to continue.</p> <p>18 And we can -- it's completely tangential. This</p> <p>19 witness lacks foundation to respond to it. And the</p> <p>20 line of questioning, aside from being completely</p> <p>21 inappropriate, lacks foundation.</p> <p>22 BY MR. LESTER:</p> <p>23 Q. Okay, you can answer, Doctor.</p> <p>24 A. I don't know the answer to that.</p> <p>25 Q. All right. So you've stated in the very</p>	<p style="text-align: right;">21</p> <p>1 time reviewed my 10 submissions and felt that I had</p> <p>2 met their requirements for forensic analysis,</p> <p>3 scientific assessment, objective assessment of the</p> <p>4 facts as they were, and that I was qualified to be</p> <p>5 certified by them to present a case to a trier of</p> <p>6 fact.</p> <p>7 Q. Do you know that he personally looked at</p> <p>8 the 10 submissions?</p> <p>9 A. It would only be assumptions on my part</p> <p>10 that he was in charge. He ran the board. And I</p> <p>11 assume that the board is the one that looked at my</p> <p>12 submission material.</p> <p>13 Q. Do you have personal knowledge that anybody</p> <p>14 actually looked at your submission materials and went</p> <p>15 through and reviewed them? Was there a process where</p> <p>16 they called you to discuss anything? Was there --</p> <p>17 did you get called for a hearing where you had to</p> <p>18 defend any of your opinions?</p> <p>19 MR. THOMPSON: I would object to the extent</p> <p>20 it's compound question. And we've now listed three</p> <p>21 questions, and apparently attempting to roll them</p> <p>22 into one. So objectionable as compound.</p> <p>23 THE WITNESS: So I don't know the answer to</p> <p>24 any of those questions. I do know no one called me</p> <p>25 at the time except to advise me of my acceptance into</p>

<p style="text-align: right;">22</p> <p>1 the college, if I remember right. It's been awhile, 2 but yeah. 3 BY MR. LESTER: 4 Q. So as you sit here today, you cannot 5 testify for certain that anybody actually looked at, 6 reviewed, or evaluated your submissions; is that 7 fair? 8 A. That would be fair, sure. 9 Q. How much did you pay for the 10 certifications? 11 A. It was a pretty standard fee for even the 12 American Board of Orthopedic Surgery and other 13 organizations I belonged to. They charged -- I 14 believe they charged about \$950 at the time, which 15 was pretty standard. 16 Q. And have you ever had to re-pay or 17 recertify? 18 A. I did have to -- I did have to document 19 continuing medical education credits with them over 20 the course of a few years at one point. And I did 21 have to re-up with them, recertify with them. It did 22 not require anything except an additional update of 23 my information, which at the time hadn't changed. My 24 clinical practice, my address, what I was doing. And 25 I opted to become a lifetime member. So I paid a</p>	<p style="text-align: right;">24</p> <p>1 Q. Have you seen any articles discussing the 2 fact that they allowed a cat to be certified as an 3 American -- as a member of the American Board of 4 Forensic Medicine? 5 A. No. 6 MR. THOMPSON: Same objection. Lacks 7 foundation. Misstates the facts. 8 BY MR. LESTER: 9 Q. Have you ever received any training through 10 either of those two boards? 11 A. I have. 12 Q. What did that entail? 13 A. They were online courses that I took as 14 part of my CME credits with them in various areas of 15 forensic assessment, report-writing, analysis of 16 data. 17 Q. Do you still have access to any of those? 18 A. Any of those what? Courses? 19 Q. The courses and tests that -- yeah. Sorry. 20 The courses and training that you received. 21 A. I don't know. I haven't tried to go back 22 and look and see if they're still available or not. 23 That would have been back somewhere around 2011. Ten 24 years ago. 25 Q. Okay. Did you ever complete any</p>
<p style="text-align: right;">23</p> <p>1 lifetime fee at the time. 2 Q. How much was that fee? 3 A. I think it was somewhere around -- these 4 are my best estimates; it's been a long time -- I 5 think it was about \$1500. 6 Q. Have you ever seen any articles or ever 7 been forwarded any information from other people in 8 your industry calling Robert O'Block the emperor of 9 junk science? 10 A. No. 11 Q. Any articles or have you seen or been 12 forwarded any information that says that these two 13 boards are certification mills? 14 MR. THOMPSON: Well, I would object to the 15 question. Lacks foundation. No foundation. Unless 16 you want to put in front of this witness where that 17 statement came from, the article that you're 18 referring to, etc. It lacks foundation for this 19 witness to respond. It's an improper question. 20 BY MR. LESTER: 21 Q. That's fine. Have you ever seen any 22 articles or been forwarded any information indicating 23 that the two boards we've been discussing are simply 24 certification mills? 25 A. No.</p>	<p style="text-align: right;">25</p> <p>1 fellowships as part of your medical training? 2 A. No. 3 Q. Did you ever hold a medical license in 4 Missouri? 5 A. No. 6 Q. Have you ever practiced medicine or seen 7 patients in Missouri? 8 A. No. 9 Q. It's my understanding, based on our last 10 deposition, that you've had 10 cases for medical 11 malpractice filed against you? 12 A. Yes. 13 Q. Two of those you needed to settle out of 14 court, correct? 15 A. Correct. 16 Q. Did either of those involve a spine issue? 17 A. No. 18 Q. Of the 10 medical malpractice cases, did 19 any involve a spinal issue? 20 A. No. 21 Q. In 2007, a grievance was filed against you 22 with the American Association of Orthopedic Surgeons, 23 correct? 24 A. Yes. 25 Q. The allegation in the grievance was that</p>

<p style="text-align: right;">26</p> <p>1 you prepared a report without all the necessary 2 facts, correct? 3 MR. THOMPSON: Objection. Misstates the 4 record. 5 BY MR. LESTER: 6 Q. You can answer. 7 A. That's incorrect. 8 Q. Okay. What do you believe the allegation 9 against you was? 10 A. I don't recall what they specifically were. 11 There was a number of them. I think there was five 12 or seven or six allegations. I'd rather not guess as 13 to what they were. 14 Q. Okay. Would you agree with me that the 15 grievance arose out of a report that you prepared 16 that someone took issue with you not having all the 17 facts at the time the report was prepared? 18 A. No, I would not agree with you. 19 Q. Okay. What do you -- in your own words, 20 what did the grievance arise out of? 21 A. The grievance arose, or arised, out of a 22 lawyer in Philadelphia misrepresenting a document I 23 sent to him as a complete report which he used to 24 settle a medical malpractice case, when in fact the 25 document that I sent to him before he whited out the</p>	<p style="text-align: right;">28</p> <p>1 MR. THOMPSON: Objection. Misstates the 2 record. 3 THE WITNESS: It -- that's -- your last 4 statement is incorrect. 5 BY MR. LESTER: 6 Q. All right. I used the word "testimony". 7 In 20 -- around 2007 in this case, you 8 prepared a draft report, correct? 9 A. Correct. 10 Q. Later, upon review of additional medical 11 records, you would have changed the opinions offered 12 in the report, correct? 13 A. I can't answer the question the way you 14 asked it. It's not accurate. 15 Q. Okay. Why is it not accurate? 16 A. That's for you to figure out. Not me to 17 tell you. 18 Q. Do you agree with me that you did not have 19 all the relevant medical records at the time you 20 drafted the 2007 draft report? And I understand it's 21 a draft report that you -- 22 MR. THOMPSON: Objection. 23 MR. LESTER: -- or anything like that? 24 MR. THOMPSON: Objection. I didn't mean to 25 step on top of what you were saying, Mike.</p>
<p style="text-align: right;">27</p> <p>1 words "draft report" was just a preliminary 2 assessment. 3 Q. So what was wrong with what I said earlier? 4 What would you disagree with? 5 A. What did you say earlier? 6 Q. I'll just move on. 7 So you would agree with me that the 8 grievance arose out of the allegation that you 9 prepared a report without having access to all of the 10 relevant medical records; is that fair? 11 MR. THOMPSON: Objection. Misstates his 12 testimony; misstates the record. Don't rephrase what 13 he just told you. He answered it and he explained 14 it. And let's move on. 15 BY MR. LESTER: 16 Q. You prepared a draft report, correct? 17 A. Correct. 18 Q. At the time of the draft report, you did 19 not have all relevant medical records, correct? 20 MR. THOMPSON: Objection. Misstates the 21 record. 22 BY MR. LESTER: 23 Q. You didn't, right? I mean, you changed 24 your testimony when you got other medical records, 25 correct?</p>	<p style="text-align: right;">29</p> <p>1 Objection. It's been asked and answered, 2 and it misstates the record and assumes facts that 3 were not present in that case. 4 BY MR. LESTER: 5 Q. You can answer. 6 A. At the time I drafted the draft preliminary 7 report, I had the relevant records at the time I 8 needed to draft that draft report. There was 9 additional materials I needed to complete the report. 10 Q. And those additional materials changed your 11 opinion or would have changed your opinion in that 12 case? 13 A. Ultimately, I came to find out that, yes, 14 if I had those additional materials, I would have had 15 a different opinion. 16 Q. Okay. The AAOS ultimately found that you 17 had violated your ethical obligations as a medical 18 legal expert; is that correct? 19 MR. THOMPSON: Objection. Misstates the 20 record. 21 THE WITNESS: That's something that they 22 have claimed, and that has been disputed by me in a 23 lawsuit against them, which they lost. 24 BY MR. LESTER: 25 Q. Well, the -- I will incorporate your</p>

<p style="text-align: right;">30</p> <p>1 lawsuit into this question. But originally, the AAOS 2 found that you had violated their ethical 3 obligations; is that fair? 4 A. Correct. 5 Q. You appealed that finding, correct? 6 A. Correct. 7 Q. Through the AAOS, internally, correct? 8 A. Correct. 9 Q. And ultimately that finding was upheld by 10 the AAOS's internal procedures; is that fair? 11 A. Correct. 12 Q. Subsequently, you then filed a lawsuit in 13 civil court disputing that; is that fair? 14 A. Correct. 15 Q. At any point in time, has the AAOS's 16 finding that you had committed and -- violated your 17 ethical obligations under their standards ever been 18 overturned or changed or modified? 19 A. It's only been shown that what they 20 published about me was false and fraudulent. But 21 nothing was overturned on their end. 22 Q. They ultimately suspended you for two 23 years, correct? 24 A. Correct. 25 Q. And at that time, you then withdrew from</p>	<p style="text-align: right;">32</p> <p>1 Q. We looked at A.6. I'm just going to read 2 it. 3 A. I'm sorry to interrupt. Can you back one 4 page, please? 5 Q. Yep. 6 A. So you're showing me the one that was 7 amended May 2010. 8 Q. I understand. We went through all this in 9 Straw, so I'm not trying to beat a dead horse here. 10 A. I just want to make sure the record's 11 clear, what you're about to show me was not in effect 12 at the time of my grievance. 13 Q. Yeah, I understand. 14 A.6. An orthopedic surgeon who provides 15 oral or written medical testimony or expert medical 16 opinions shall seek and review all pertinent medical 17 records and applicable legal documents including 18 relevant prior depositions before rendering any 19 statement or opinion on the medical or surgical 20 management of the patient. 21 Did I read that correctly? 22 A. You did, yes. 23 Q. And then here is your deposition from April 24 where you say, I'll agree that at the time an 25 orthopedic surgeon testifies with their final</p>
<p style="text-align: right;">31</p> <p>1 the AAOS; is that correct? 2 A. At that time. At the end of the 3 administrative hearing, I withdrew. 4 Q. We went through some of the AAOS ethical 5 standards, and I'm not going to go through all that 6 now. But you agreed with me at Miss Straw's 7 deposition that you would agree that when an 8 orthopedic surgeon offers their testimony, the final 9 report or final testimony, sworn testimony in a case, 10 they should have sought out and reviewed all 11 pertinent medical records and applicable legal 12 documents, including prior depositions. Do you still 13 agree with that? 14 A. I agree with everything except for the 15 prior depositions portion. I don't remember my 16 testimony about what that meant. So I would agree 17 with everything up to prior depositions, because my 18 opinions are really based on the medical facts, the 19 medical evidence, and not on deposition testimony. 20 So I don't know how that came into your question. 21 Q. Sure. Well, let me just show you, I guess. 22 This is -- I'm going to share my screen, hopefully. 23 This is what will be marked as -- can you see? AAOS 24 Standards of Professionalism? 25 A. I see it.</p>	<p style="text-align: right;">33</p> <p>1 opinions that they should have done everything in 2 Number 6. I will agree to that. 3 Did I read that correctly? 4 A. You did. 5 Q. Are you -- do you agree with your April 6 self? 7 A. I'm going to disagree with my April self. 8 I don't think depositions are anywhere close to 9 important as the actual medical facts and the medical 10 evidence. I've seen plenty of depositions contradict 11 the medical evidence, which the deposition is taken 12 maybe four years after the event took place. And 13 somehow a person's memory four years later can be 14 better than the contemporaneously-made record -- to 15 me doesn't make any sense. And so I don't know why I 16 didn't pick up on that in April when you took my last 17 deposition, but I'll correct that today and say, I 18 would not rely on depositions. I think they're okay 19 to read, they're good to read, they're helpful. They 20 provide some insight about plaintiffs, defendants, 21 experts, people involved in the case. But to rely on 22 them for a factual opinion is not a safe thing to do. 23 The safest and the most scientific thing to do is to 24 rely on the actual contemporaneously-created 25 documents at the time, not somebody's recollection in</p>

<p style="text-align: right;">34</p> <p>1 a legal case two, three, four years, five years 2 later. 3 Q. Okay. Did you review any depositions in 4 this case? 5 A. No. 6 Q. Did you review any of the discovery 7 responses in this case? 8 A. No. 9 Q. Have you reviewed any of the work done by 10 other experts in this case? 11 A. No. 12 Q. Did you review any of the photographs or 13 diagrams showing how the accident occurred or the 14 damage from the accident? 15 A. No. 16 Q. Does it matter to you at all how the 17 accident occurred? 18 A. In a very general sense, I'd like to know. 19 Was this a skydiving accident? Somebody diving into 20 a pool? A car wreck? In general, I'd like to know. 21 But no, I've seen minor motor vehicle accidents cause 22 significant injury to people. And I've seen major 23 accidents, rollovers, total head-on collisions, and 24 people walk away with a scratch. So what I rely on 25 is the medical facts and the medical evidence. Not</p>	<p style="text-align: right;">36</p> <p>1 identified the responsive documents? 2 A. That's correct. 3 Q. Okay. And we have, I have, a file that was 4 produced to me on Friday that contains seven PDFs. 5 We have the depo notice, the CV, fee schedule, 6 correspondence, Graboff invoices, records reviewed, 7 notes, and report. Are those the documents that you 8 gathered? 9 A. Correct. 10 Q. And is that everything that you have that's 11 responsive to the Exhibit A subject to the 12 objections? 13 A. I've got to be careful answering that. I'd 14 like to say yes, but I don't know what happened to 15 the material -- I sent my entire file to the firm. 16 Whether they transmitted the entire file to you, I do 17 not know. 18 Q. Fair. 19 A. So I don't know what you have. I know what 20 I sent, but I don't know what you have. 21 Q. Yeah. I'll just short-circuit it. You 22 provided everything that you believed was responsive 23 to plaintiff's counsel, correct? 24 A. Yes. 25 Q. Okay.</p>
<p style="text-align: right;">35</p> <p>1 the damage to the vehicles. 2 Q. Sure. I'm going to mark as Exhibit 1 the 3 notice of the deposition that we filed today. 4 (Whereupon, Exhibit No. 1 was designated 5 for identification) 6 BY MR. LESTER: 7 Q. Have you seen that? 8 A. Yes, I have a copy of it here. 9 Q. I recognize that James has objected to a 10 portion of Exhibit A, but I just want to ask the 11 general question: Did you help gather the documents 12 listed on Exhibit A or was that just done by someone 13 else? 14 A. I don't understand what you're asking me. 15 Help gather. 16 Q. Can you flip to Exhibit A? 17 A. Okay. I have it. 18 Q. Did you gather the documents that were 19 requested herein and provide them to plaintiff's 20 counsel, or did -- was that handled outside of your 21 office? 22 A. Yes. 23 Q. I asked a bad question. Did you handle it? 24 A. I took care of it. 25 Q. Okay. You personally went through and</p>	<p style="text-align: right;">37</p> <p>1 I'm going to mark just for the sake of the 2 record your CV, fee schedule, and testimony history 3 as Exhibit 2. 4 (Whereupon, Exhibit No. 2 was designated 5 for identification) 6 BY MR. LESTER: 7 Q. Do you have those in front of you? 8 A. I can get them. 9 Q. I just want to -- I assume that they're all 10 up-to-date and there's nothing you need to add to any 11 of them or change or modify. 12 A. I verified they were all current and 13 up-to-date before I sent them, correct. 14 Q. Okay. Can you open your testimony history? 15 A. Sure, one second. If I accidentally 16 disconnect myself, I'll come back. I'm in uncharted 17 territory here. Looking for something with -- okay. 18 I found it. 19 Q. You got your testimony history open? 20 A. I'm getting there. Okay. Can you still 21 hear me? 22 Q. I can. 23 A. Okay. I can't see you anymore, but I can 24 see my testimony. I'm ready. 25 Q. Okay. I just want you to go through -- can</p>

<p style="text-align: right;">38</p> <p>1 you identify any of these cases after let's just say 2 from 2017 through the present where it involved a 3 spine injury? And at the same time, I'd also like 4 you to identify anyone where you know you were 5 retained by the defendant in that same time period. 6 A. Okay. That's really going to be pretty 7 much impossible. Because they're not categorized 8 this way. I'd be more than happy to attempt to 9 answer your question and look and see if I can 10 remember just by the name of the case. But it 11 doesn't say whether it was a plaintiff or defense 12 case, and it certainly doesn't say what it was about. 13 Q. I'd appreciate it if you could do your 14 best. 15 A. No, I will. And you said you wanted me to 16 look starting in 2017? 17 Q. Yes. 18 A. Okay. The Alyson King -- February 23, 2017 19 Allison King case. I believe that was a spine case, 20 and I was plaintiff expert. 21 August 17, 2017, Vicki Lane, I believe that 22 was also a spine case. I was plaintiff expert. 23 Same thing September 14, 2017, the Teresa 24 Robey, R-o-b-e-y, case. I believe that was also -- 25 COURT REPORTER: That was also what? I</p>	<p style="text-align: right;">40</p> <p>1 case. I was plaintiff expert. 2 I'm just going to continue on down here. 3 There may be others in here that are 4 plaintiff or defense or spine that are not jumping 5 out at me, but I'm doing the best I can for you. 6 Q. Appreciate it. 7 A. That's all I can come up with. 8 Q. It looked to me like the three that you 9 identified were likely medical malpractice cases 10 rather than personal injury cases; is that fair? 11 A. That's definitely a fact. They were all 12 med mal cases. 13 Q. Okay. I'm going to mark as Exhibit 3 the 14 invoice that's in this file. 15 (Whereupon, Exhibit No. 3 was designated 16 for identification) 17 BY MR. LESTER: 18 Q. I'll share my screen with you so you can 19 see the same thing. Do you see this invoice? 20 A. Yes, sir. 21 Q. This is the only -- well, let me ask you: 22 Is this the only invoice you've submitted other than 23 prepayment of the deposition? 24 A. You broke up a little bit. Please repeat. 25 Q. Is Exhibit 3 the only invoice that you have</p>
<p style="text-align: right;">39</p> <p>1 think you might have frozen. 2 Mr. Lester? Mr. Thompson? Michael? 3 I think everybody froze. 4 And now I get a notice my internet 5 connection is unstable, and I'm hard-wired here. 6 Mike? 7 MR. LESTER: Let's go off the record. I 8 think we might have lost our court reporter. 9 MR. THOMPSON: I think she's back. 10 COURT REPORTER: I've been here all along. 11 But I lost all of you. Are we off the record? 12 Mike, can you hear me? 13 MR. LESTER: Let's go off the record. 14 MR. MAN: We're now going off the record. 15 The time is 12:11. 16 (Pause in proceedings) 17 VIDEOGRAPHER: We're now going back on the 18 record. The time is 12:13. 19 BY MR. LESTER: 20 Q. Dr. Graboff, we had some more technical 21 issues. I think you were telling us about the 22 September 14th, 2017 case on your testimony history. 23 If you could pick up from there. 24 A. Correct. I believe that September 14, 25 2017, Teresa Robey, R-o-b-e-y case, that was a spine</p>	<p style="text-align: right;">41</p> <p>1 submitted in this case other than prepayment for this 2 deposition? 3 A. Let me clarify that. Because what you're 4 stating is -- this is not an invoice. Top right 5 corner says Statement. So this is a statement that 6 will summarize all of the invoices. So if you look 7 in the body under transactions, you'll see invoices. 8 So there was -- looks like there was one, two, three 9 invoices. And that would be the sum total in this 10 case. 11 Q. What's the total amount that you've billed 12 in this case? 13 A. I don't know the number. And I'd have to 14 get a calculator out to tell you, add them all up. 15 Q. Is it fair to say everything that you've 16 billed in this case is on this statement, Exhibit 3? 17 A. That's correct. 18 Q. Okay. Is there any amount of unbilled work 19 other than deposition preparation that you need to 20 bill for? 21 A. Deposition preparation was already paid. 22 So there's nothing else. 23 Q. All right. So this is it, we're completely 24 up-to-date? This is everything you've billed in the 25 case for all your time?</p>

<p style="text-align: right;">42</p> <p>1 A. Yes, sir.</p> <p>2 Q. And do you have any additional work that</p> <p>3 you are planning or believe that you need to do in</p> <p>4 order to render final opinions at trial?</p> <p>5 A. There's nothing else I need to do to render</p> <p>6 a final opinion at trial. I have everything I need</p> <p>7 for that. However, usually in preparation for</p> <p>8 testimony at trial I like to look at any -- defense</p> <p>9 or plaintiff, depending on what I'm doing -- other</p> <p>10 expert depositions, other treating physicians in</p> <p>11 depositions, other additional examination reports or</p> <p>12 things done. In this case, for defense, I'd like to</p> <p>13 look at those things. Not to change or alter or</p> <p>14 change my opinion, but rather they are more of just</p> <p>15 an interest in how things are going in terms of the</p> <p>16 trial.</p> <p>17 Q. So in your opinion at this point in time,</p> <p>18 all of the statements and opinions in your report are</p> <p>19 final and shouldn't change between now and trial; is</p> <p>20 that fair?</p> <p>21 MR. THOMPSON: I would object to the extent</p> <p>22 that if there's additional discovery -- discovery is</p> <p>23 still ongoing -- obviously we will provide relevant</p> <p>24 information to the doctor. And if they in any way,</p> <p>25 shape, or form change his opinions, we would let you</p>	<p style="text-align: right;">44</p> <p>1 I can share my screen.</p> <p>2 A. No, I have those. They should be on a</p> <p>3 yellow-lined page.</p> <p>4 Q. I think it's going to be close to what you</p> <p>5 testified earlier, your dictation and your</p> <p>6 yellow-lined page. Do you see my screen?</p> <p>7 A. Yes.</p> <p>8 Q. Is this what you were talking about earlier</p> <p>9 where you said you dictated some information --</p> <p>10 sorry. I'm going to rephrase.</p> <p>11 Are the first three pages of this, which</p> <p>12 have been Bates labeled Graboff 734 through 736, the</p> <p>13 dictation that you referenced earlier as eventually</p> <p>14 having been incorporated into your full report?</p> <p>15 A. Correct.</p> <p>16 Q. And then the last page is a yellow notebook</p> <p>17 lined paper with handwritten notes; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. Those are -- and that's your handwriting,</p> <p>20 your notes?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know when these notes were taken?</p> <p>23 A. Yes, I do.</p> <p>24 Q. When is that?</p> <p>25 A. Those would have been taken by me as I was</p>
<p style="text-align: right;">43</p> <p>1 know.</p> <p>2 THE WITNESS: So at the very end of this</p> <p>3 report, as you know, there's a statement that says if</p> <p>4 I have had the opportunity to receive any additional</p> <p>5 materials or review these materials, I reserve the</p> <p>6 right to change my opinion. So no, this is not hard</p> <p>7 and cast in stone. It could change.</p> <p>8 But based on everything that I have</p> <p>9 reviewed to date, this is what I am prepared to</p> <p>10 testify to.</p> <p>11 BY MR. LESTER:</p> <p>12 Q. All right. The next item that's in the</p> <p>13 file that I have is records reviewed. There's 691</p> <p>14 pages of medical records. Does that sound inclusive</p> <p>15 of everything that you reviewed in this case?</p> <p>16 A. I don't recall that.</p> <p>17 Q. Do you have any idea, one way or another?</p> <p>18 A. I don't recall that number.</p> <p>19 Q. Fair enough. We'll go through some</p> <p>20 specifics later. But I'm going to mark as Exhibit 4</p> <p>21 some handwritten notes that I have from you.</p> <p>22 (Whereupon, Exhibit No. 4 was designated</p> <p>23 for identification)</p> <p>24 BY MR. LESTER:</p> <p>25 Q. Do you have those in front of you? If not,</p>	<p style="text-align: right;">45</p> <p>1 reviewing the materials in preparation for drafting</p> <p>2 my report, and so they were probably done right on or</p> <p>3 about June 14, 2021, which is the date that I started</p> <p>4 the report.</p> <p>5 Q. I'm going to go through just in some of</p> <p>6 these places where I can't read your handwriting, or</p> <p>7 where there's an abbreviation, I just want to know</p> <p>8 what it says. On the third line with the first word</p> <p>9 "acute". Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Can you just read what that line is saying</p> <p>12 or what your notes mean?</p> <p>13 A. So it says, Acute L5/S1 left HNP, which</p> <p>14 stands for herniated nucleus pulposus. Underneath it</p> <p>15 is the word protrusion. Plus L circle, which means</p> <p>16 left, S1 compression, with an arrow leading down to</p> <p>17 radiculopathy, which means it's causing a</p> <p>18 radiculopathy.</p> <p>19 Q. Okay. And then beneath that parenthesis it</p> <p>20 says objectively confirmed. What's the rest of that</p> <p>21 say?</p> <p>22 A. Objectively confirmed at operation</p> <p>23 February 4, 2019.</p> <p>24 Q. Okay. The seventh line down it starts with</p> <p>25 Failed Spinal. Could you read what that line says?</p>

<p style="text-align: right;">46</p> <p>1 A. Yes. Failed Spinal Surgery Syndrome, 2 hyphen, post-laminectomy syndrome. 3 Q. Okay. I assume where you have written 4 FM colon, you're talking about the future medical 5 care. Is that what that stands for? 6 A. That's correct. 7 Q. And then we'll get into it when we get into 8 your report, but it looks like those five are the 9 future medical care that you're thinking Mr. Stoneman 10 may need. 11 A. Well, on these notes. But I'm not sure if 12 my actual report lists more of future medical than 13 what I scribbled down here. I have a line in the 14 report, not these notes. 15 Q. What does it say on the left-hand margin 16 there, right next to the future medical? 17 A. Where the bracket is? 18 Q. Yes. 19 A. Okay. So it says, op, which is op, meaning 20 an operation. This is me notating to myself that 21 there was a surgery performed on February 4, 2019, 22 left L5/S1 herniated nucleus pulposus, decompression. 23 Q. And then what does it say in the margin 24 right underneath that? 25 A. In the parenthesis beneath that, it says</p>	<p style="text-align: right;">48</p> <p>1 All right, we'll take five. 2 VIDEOGRAPHER: We're now going off the 3 record. The time is 12:24. 4 (Recess) 5 VIDEOGRAPHER: We're now going back on the 6 record. The time is 12:32. 7 BY MR. LESTER: 8 Q. All right, Dr. Graboff, do you have your 9 report in front of you? 10 A. I do. 11 Q. I'm going to mark it as Exhibit 5. 12 (Whereupon, Exhibit No. 5 was designated 13 for identification) 14 BY MR. LESTER: 15 Q. And just so we're talking about the same 16 thing, it is a 12-page report dated June 14th, 2021? 17 A. That's correct. 18 Q. Okay. Fair to say the first page is mostly 19 just a breakdown of your qualifications that we 20 talked about this morning? 21 A. Yes. 22 Q. Second page is a list of the medical 23 records and imaging that you've looked at in this 24 case? 25 A. Starting at the bottom of the first page</p>
<p style="text-align: right;">47</p> <p>1 agree with radiology. 2 Q. Okay. The bottom is restrictions. These 3 are all in your report so I'm not going to spend too 4 long with it. But I want to know, are these 5 restrictions that you came up with or did you pull 6 these from a specific medical record? 7 A. No, these are all restrictions that came 8 out of my head. 9 Q. Okay. So that's not a summary of a medical 10 record or opinion; is that fair? That's your own 11 opinion? And we'll get to the actual restrictions 12 here in a little bit. 13 A. Yes, correct. 14 Q. We've been going for about 55 minutes on 15 and off. Let's take a quick, just a five-minute 16 break. And when we come back, I'll go through your 17 report, if you want to have that ready in front of 18 you. 19 A. Ready to go. Thank you. 20 MR. THOMPSON: And obviously not holding 21 you to anything, but do you have some estimate, 22 Michael, on time? 23 MR. LESTER: It's not that complicated. I 24 expect we'll be done in the next hour or so. 25 MR. THOMPSON: Okay. Thanks very much.</p>	<p style="text-align: right;">49</p> <p>1 and continuing through the second page and at the 2 very top of the third page, correct. 3 Q. On the top of the third page, there's a 4 section called Brief Case Summary. Do you see where 5 I'm at? 6 A. I do. 7 Q. It is my understanding that basically from 8 that, where it says Brief Case Summary to where it 9 says -- through to Page 9 where the bullet points 10 start with your opinions, that what you've tried to 11 do here is basically give a synopsis and overview of 12 the medical records; is that fair? 13 A. That's fair. 14 Q. So there's no opinions of yours between 15 Page 3 and Page 9 and-a-half, this is just what you 16 believe was important as you went through the medical 17 records. Fair? 18 A. I don't want to say fair. Let me answer it 19 this way and see if it's fair enough. What I 20 dictated there and put on in print is a summary of 21 the case for me, for my purposes, not necessarily 22 pulling out the most important things in the case. 23 But you know how these things go, sometimes you get 24 deposed or go to trial two months later, or four 25 years later. I wanted to write something down so</p>

<p style="text-align: right;">50</p> <p>1 that when I picked up my file how many years later I 2 could review the brief summary of the case and have a 3 really good understanding for myself as to what 4 happened.</p> <p>5 So the issue I'm taking with you is that it 6 doesn't necessarily call out what I thought was the 7 most important parts of the case, even though it does 8 contain a lot of that. It's really there for me so 9 that I don't have to re-review the entire how many 10 hundred thousands of pages of records all over again 11 in five years when I testify. Just review my own 12 summary, and it makes sense for me.</p> <p>13 Q. All right. Perfect. That is a fair enough 14 answer. So the part of my -- I asked a bad question. 15 The part of my question that I'm really focused on is 16 from Page 3 to Page 9 and-a-half, everything written 17 in there is not really your opinion but it's your 18 synopsis of what was contained in the medical 19 records, fair?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. And to the extent that there's 22 discussions in here about plaintiff's subjective 23 issues and complaints, that is simply you looking for 24 plaintiff's self-reporting in the medical records and 25 then pulling that out. Is that fair?</p>	<p style="text-align: right;">52</p> <p>1 of the lumbar spine L5/S1, very central left-sided, 2 is?</p> <p>3 A. How I would explain the findings in this 4 case was that the disk that separates the bones 5 between L5 and S1 is like a fresh jelly doughnut. 6 And that this jelly doughnut was compressed with 7 sufficient force to allow a big blob of that jelly 8 inside the doughnut to explode out through the 9 posterior back end of the wall of the doughnut, 10 through the dough, and compress the nerve going down 11 the left leg. And the medical facts to base that up 12 are well-written in the operative report. And on the 13 radiologic studies you can see it. It was a forceful 14 sort of explosion of the disk material posteriorly 15 outside the back of the disk to the left side that 16 completely compressed the S1 nerve root.</p> <p>17 Q. Okay.</p> <p>18 A. And basically made a hole in the -- if you 19 looked at a jelly doughnut and think about making a 20 hole in the skin of the jelly doughnut and then a 21 bunch of the jelly just squirting out.</p> <p>22 Q. Is this a rare or uncommon injury?</p> <p>23 A. No.</p> <p>24 Q. Is it -- was this particular injury 25 different than a normal herniated disk injury?</p>
<p style="text-align: right;">51</p> <p>1 A. Correct.</p> <p>2 Q. You wouldn't -- you wouldn't have been 3 trying to independently verify the subjective 4 complaints, it's just this is what he told his 5 doctors at this time. Is that fair?</p> <p>6 A. Well, I don't know so much about that. 7 That's more than I would know. All I know is what 8 the medical records --</p> <p>9 Q. Sure.</p> <p>10 A. -- have written.</p> <p>11 So all I'm doing is regurgitating the parts 12 of the medical records as they are written, assuming 13 that they are true and correct as they are written, 14 as part of my summary.</p> <p>15 Q. Okay. And from Page 3 to Page 9 16 and-a-half, to the extent there's any objective 17 finding or diagnosis in this portion of your report, 18 it's you summarizing what the treating doctors found 19 rather than you commenting on your own finding; is 20 that fair?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. On Page 5 of your report, it starts 23 getting into the diagnosis and the surgery. I just 24 want to know in your own words how would you explain 25 to a lay jury what a large herniated nucleus pulposus</p>	<p style="text-align: right;">53</p> <p>1 MR. THOMPSON: Objection. Lacks 2 foundation. Lacks facts for the doctor to formulate 3 an opinion.</p> <p>4 THE WITNESS: I agree with the objection, 5 but....</p> <p>6 BY MR. LESTER:</p> <p>7 Q. That's fine. That question --</p> <p>8 A. What was --</p> <p>9 Q. -- I'll rephrase.</p> <p>10 A. Yeah, if you can just rephrase it so I 11 understand what you mean by "normal".</p> <p>12 Q. How many patients in your clinic did you 13 treat with herniated disks?</p> <p>14 A. Oh, gosh, in my surgical career, I probably 15 did 4- or 500 of these surgeries myself. I probably 16 treated a couple of thousand of these patients. Not 17 every one of them needed an operation.</p> <p>18 Predictably -- even as Dr. Bailey said, predictably, 19 this one would need surgery, I would agree. But 20 sometimes they don't. So I would say I probably 21 treated over a thousand, 2,000 in total in my career.</p> <p>22 Q. Is there anything about this injury that 23 would make it abnormal or otherwise unexpectedly 24 different than the thousands that you've looked at 25 previously?</p>

<p style="text-align: right;">54</p> <p>1 MR. THOMPSON: Objection. Same objection, 2 to the extent it lacks foundation, lacks facts 3 necessary to formulate a response. 4 THE WITNESS: I'm not quite sure what 5 you're trying to ask me here. It's definitely 6 abnormal because you should not have disk material 7 extruded outside of the disk squashing the nerve. 8 It's definitely abnormal in that regard, if that's 9 what you mean. 10 BY MR. LESTER: 11 Q. How many of the 400 to 500 surgeries that 12 you did involved disk material outside squashing the 13 nerve? 14 A. Probably the majority. That's why you do 15 the surgery. 16 Q. Okay. The -- you said you had done 4- to 17 500 surgeries, correct? Is that of the -- like 18 the -- at the bottom of Page 5, it lists the actual 19 operation that was performed. Do you see that? 20 A. Correct. 21 Q. Have you performed those surgeries before? 22 A. I have, yes. 23 Q. When's the last time you performed a 24 laminectomy decompression? 25 A. Best estimate would be in December of 2004.</p>	<p style="text-align: right;">56</p> <p>1 BY MR. LESTER: 2 Q. Can you give any estimate at all? 3 MR. THOMPSON: Same objection. 4 THE WITNESS: I don't know the answer. If 5 I could, I'd give you an estimate. But I don't even 6 have a basis to give you an estimate. 7 BY MR. LESTER: 8 Q. Can you recall any patient that you have 9 ever seen that you believed had a herniated disk that 10 you attributed to a rear-end motor vehicle accident? 11 A. As I sit here today, I don't remember. 12 Q. Do you agree with me that typically 13 herniated disks can be associated with lifting heavy 14 objects? 15 A. I would agree. 16 MR. THOMPSON: Objection to the extent it 17 lacks foundation; incomplete hypothetical. 18 BY MR. LESTER: 19 Q. Would you agree that lifting heavy objects 20 in general can cause a herniated disk? 21 A. That's a known mechanism, I would agree. 22 Q. Is that a type of traumatic event that when 23 you were discussing earlier that most herniated disks 24 are caused by some type of trauma, would heavy 25 lifting flat back blowout be incorporated under that</p>
<p style="text-align: right;">55</p> <p>1 Q. When's the last time you performed a 2 partial facetectomy and neural -- I'm not going to 3 get the words right -- but foraminotomy? 4 A. Same time. 5 Q. So it's been 16 years since you did either 6 of those? 7 A. Yes. 8 Q. Of the thousands of people that you saw 9 with herniated disks, was there a primary cause, 10 something that usually caused it? 11 A. I'm going to say the majority of them were 12 somehow related to a traumatic event. But not all. 13 Sometimes a disk can herniate without trauma. But by 14 far, the vast majority are traumatically related. 15 Q. How many do you think you treated or have 16 seen -- how many patients have you seen do you 17 believe that had a herniated disk that you attributed 18 to a rear-end motor vehicle accident? 19 A. I don't know the answer to that. 20 Q. More or less than 10 percent of your 21 herniated disks? 22 MR. THOMPSON: Objection. Lacks 23 foundation, based on the doctor's prior response. 24 THE WITNESS: I don't know the answer to 25 that.</p>	<p style="text-align: right;">57</p> <p>1 trauma umbrella? 2 A. It would, yes. 3 Q. Can you give me any estimate of how many of 4 the thousands of herniated -- thousands of patients 5 that you saw with herniated disks that you would 6 attribute to lifting heavy objects? 7 MR. THOMPSON: Objection. Incomplete 8 hypothetical; lacks foundation. 9 THE WITNESS: So, I do -- as I sit here 10 today, and as you aptly pointed out a few times 11 already in today's deposition, it's been a long time 12 since I've done surgery. I don't remember the 13 etiologies to give you any estimates. I can give you 14 just the general framework, which I've already done. 15 Trauma or degenerative conditions are the typical 16 reasons. Trauma is the vast majority. And that 17 trauma can be anything from what you've already 18 suggested, lifting; it can be motor vehicle 19 accidents; it can be heavy sneezing and coughing; 20 twisting the wrong way; getting up out of a chair the 21 wrong way. So there's many etiologies, but by far 22 the vast majority of traumatically induced. Too much 23 force is placed across the disk. And of course, 24 depending on the disk itself, how fragile it is, it 25 could be more easily damaged or not. But as for my</p>

<p style="text-align: right;">58</p> <p>1 own history of the surgeries I've done back in -- 2 from '85 to 2005, I just don't remember, you know, 3 who and what, where they came from. 4 Q. Sure. What about when you were a 5 clinician? Let's just focus on the last five years 6 when you've had a clinic. Can you give any specific 7 estimate during that time? 8 A. Specific estimates of...? 9 Q. How many herniated disks came from -- let's 10 start with motor vehicle accidents, rear-end motor 11 vehicle accidents. 12 A. I don't recall. 13 Q. All right. And then same question, but 14 lifting. 15 A. I don't recall. It's just been too long. 16 Q. Okay. On Page 6 of your report you discuss 17 the post-surgery meetings with his treating physician 18 and then a new MRI scan. Are you on Page 6? 19 A. Yes. 20 Q. You would agree with me that you originally 21 reported that -- the 70 percent clinically better 22 after the surgery. 23 A. Yes. 24 Q. Is that normal? Is it a good recovery? 25 A. It would be a good recovery in general</p>	<p style="text-align: right;">60</p> <p>1 Q. And it says, the physician interpretation 2 of a good clinical outcome. Do you agree with that? 3 A. Well, I can't -- I'm not in a position to 4 agree or disagree. I just putting in quotes what he 5 wrote. That's what he said. 6 Q. Okay. As we sit here today, are you not 7 going to offer any opinions about whether this was a 8 good clinical outcome? 9 A. Well, when you -- if you were to stop the 10 case right here, that would be an interesting point. 11 But there's a lot more to this case that continues to 12 go on, including subsequent MRI scans which show 13 recurrent disk herniations, granulation tissue 14 enhancement around the S1 nerve root with swelling 15 and inflammation. So plenty of objective pathology 16 after this entry by the physician. And the physician 17 himself notes that the man needed to have more 18 surgery. And even recommended more surgery. So when 19 you take it all into account, I will have a different 20 opinion at the time of trial than if you just leave 21 it at this sentence here. 22 Q. One, two, three. Three paragraphs down, 23 starts with, The new MRI scan. Is that what you were 24 just talking about? 25 A. Yes.</p>
<p style="text-align: right;">59</p> <p>1 speak -- in general terms, yes. Good recovery. 2 Elimination of the radicular symptoms in the leg 3 would be considered a good recovery. 4 Q. And you agree that in April 2019 his 5 treating physician cleared him to return to work, 6 correct? 7 A. Correct. 8 Q. And that subsequent to that his working or 9 not working was based on his own subjective 10 complaints rather than anything his treating 11 physician thought he could find or treat; is that 12 fair? 13 MR. THOMPSON: Object. That misstates the 14 records. 15 THE WITNESS: One second. 16 BY MR. LESTER: 17 Q. I'll move on to a different question. 18 Around the middle of the page it says, the physician 19 interpretation of a good clinical outcome. Do you 20 agree with that? 21 A. I need to find out where you are. 22 Q. Page 6, around the middle of the page. 23 It's a paragraph that starts with the phrase, In the 24 assessment, it is noted. 25 A. I found it.</p>	<p style="text-align: right;">61</p> <p>1 Q. All right. What is -- can you explain what 2 a recurrent or residual disk fragmentation is, in lay 3 terms? 4 A. Sure. So not only did I read the 5 radiologist's report, but I looked at the MRI scan 6 myself, confirming it. And I've also had this 7 problem occur in my own patient population that I've 8 done surgery on, where they've had either a residual 9 disk fragment that moves around in the disk space 10 causing trouble, or because the disk has been so 11 severely exploded, it's been damaged, it came out in 12 large chunks, it blew out the back side of the 13 intervertebral disk space, that there's still 14 residual disk material in there. He didn't have a 15 complete disectomy by the surgeon. He just had 16 removal of the herniated portions. It's not uncommon 17 for this now damaged disk to re-herniate. More 18 material can squirt out towards the back side or move 19 about. And it's very difficult to tell on an MRI 20 scan whether it's a retained fragment that wasn't 21 completely taken out the first time, which happens, 22 or whether it's a new fragment that developed 23 subsequent to the first surgery. But in either case, 24 it doesn't matter, the fact is is that there's now a 25 new or persistent piece of irritating disk material</p>

<p style="text-align: right;">62</p> <p>1 that's in the disk space causing the patient to have 2 symptoms. And that's how I would explain it to a 3 jury. 4 Q. Okay. The second sentence in that 5 paragraph says it's not causing any neurologic 6 impingement. What does that mean? 7 A. It means that the disk, the fragment that's 8 there or the recurrent disk herniation, is not 9 compressing a nerve. 10 Q. And the last sentence also says that same, 11 without neurologic compression. Do you see that? 12 A. Yes. 13 Q. Do you agree with that finding? 14 A. Correct. I looked at that MRI scan. I did 15 not see the material impinging on the nerve root. 16 Q. Okay. 17 A. However, be aware that disk space pathology 18 can cause referred pain to the buttocks, the lower 19 back, the upper thigh. It usually doesn't go down 20 all the way to the tips of the toes, but it can go 21 down the leg. So you can have what's called disk 22 space or discogenic radiating pain. And there's 23 certainly significant pathology in this disk space 24 that can do that even in the absence of compressing 25 the neurologic structure.</p>	<p style="text-align: right;">64</p> <p>1 A. Okay. Not specific to -- 2 Q. Not specific to this. Just when we're 3 talking about that 10 percent of the -- less than 10 4 percent of the population where this doesn't work, 5 are there any known issues that routinely crop up in 6 those kind of cases? 7 A. There's a known issue in patients that have 8 a significantly degenerative disk that herniates, or 9 extrudes out, or protrudes out. Those typically have 10 a higher problematic issue with persistent 11 fragmentation or recurrent herniations than someone 12 that has a healthy disk. So the example that I would 13 give to a jury, a person with a healthy disk has a 14 freshly baked, warm jelly doughnut that's plump and 15 you can stretch the dough and you can mush it around 16 and it's nice and pliable. The risk doesn't exist so 17 much in that case. Take the same jelly doughnut, 18 leave it out in the hot sun for two or three weeks so 19 it kind of flattens out, dries up, the jelly gets 20 kind of thick and dry on the inside. That kind of 21 jelly doughnut, that patient, if that's what his disk 22 looks like, they have a higher chance of having 23 recurrent herniations, persistent fragmentation, and 24 poor results from trying to take out the disk. 25 Q. Did you find anything in your review of the</p>
<p style="text-align: right;">63</p> <p>1 Q. Is there any objective finding that you can 2 point to that would show that? 3 MR. THOMPSON: I would object to the extent 4 he just answered that question. 5 THE WITNESS: I thought I did answer that 6 question. The MRI scan that we're talking about, the 7 follow-up MRI scan that he had, objectively shows 8 that. An MRI is an objective test. 9 BY MR. LESTER: 10 Q. Yeah, sorry. I guess I misunderstood. 11 It's a poor question on my part. 12 What percentage of your patients that you 13 performed these surgeries on have this type of issue? 14 A. Best estimate, no more than 10 percent. 15 And I'm being really generous with that number. 16 Failed spinal surgery syndrome, post-laminectomy 17 syndrome, persistent disk fragments, recurrent disk 18 herniations. That whole genre of problems post 19 spinal surgery, I would say no more than about 10 20 percent. 21 Q. And are there any known comorbidities or 22 causes for why those 10 percent might have the 23 surgery fail or have these subsequent issues? 24 A. In general? 25 Q. Yeah.</p>	<p style="text-align: right;">65</p> <p>1 records in this case that might explain why 2 Mr. Stoneman's particular back surgery allegedly 3 failed? 4 A. No. 5 Q. Do you have any explanation at all, not 6 from the records, but just from your experience as an 7 orthopedic surgeon who's done this surgery? 8 A. I do. It happens. It's something that you 9 have to consent the patient for. In consenting a 10 patient to doing the exact operation that's listed by 11 Dr. Bailey, the conversation between the surgeon and 12 the patient has to include: You can have a recurrent 13 disk herniation. This surgery can fail. You can 14 have persistent symptoms in your back and your leg. 15 You may have a persistent fragment in there that we 16 can't get out or we didn't get out. 17 These are all parts of the informed 18 consent. It happens. It's a well-known fact that it 19 happens. And then there are even people that have 20 had a successful surgery where the complete 21 decompression took place with no recurrence of 22 herniation, no recurrence of a fragment, no 23 persistent fragment, no recurrence of a herniation, 24 those people, some people, can develop -- you look 25 frozen.</p>

<p style="text-align: right;">66</p> <p>1 Q. No.</p> <p>2 A. Your eyes are blinking. Good.</p> <p>3 Those patients can develop post-laminectomy</p> <p>4 syndrome. I don't have an explanation for that. I'm</p> <p>5 not aware of anything in the literature that explains</p> <p>6 why they can develop that. But they can actually</p> <p>7 come out of a surgery worse than they went in. And</p> <p>8 that has to be part of the consent.</p> <p>9 Q. Do you have an estimate based on your</p> <p>10 experience of how many people have these issues</p> <p>11 without any comorbidities or degenerative changes in</p> <p>12 their back beforehand?</p> <p>13 A. No.</p> <p>14 Q. I assume it's a subset of the 10 percent?</p> <p>15 A. More likely than not it's going to be</p> <p>16 within that 10 percent, I would agree.</p> <p>17 Q. On Page 8 of your report you started having</p> <p>18 some bullet points that include some work activities.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Where is that pulled from?</p> <p>22 A. So you're looking at the top of Page 8; is</p> <p>23 that correct?</p> <p>24 Q. Top of Page 8 in the work ability summary</p> <p>25 it indicates that he could perform the following</p>	<p style="text-align: right;">68</p> <p>1 agree or disagree with any of that. Not that I</p> <p>2 would, I'm just regurgitating it anyway.</p> <p>3 And then the last bullet, able to perform</p> <p>4 activities on a constant basis, sitting, reaching in</p> <p>5 front, to the left, to the right, manual handling,</p> <p>6 frequent basis, standing, walking, kneeling, reaching</p> <p>7 overhead, front right, reaching overhead, front</p> <p>8 left -- I think I agree with most of that. But I</p> <p>9 think I phrased it differently in my own limitations,</p> <p>10 which I would agree with more than what they've</p> <p>11 written.</p> <p>12 Q. Okay. And what did you -- what type of</p> <p>13 tests did you perform on Mr. Stoneman to measure the</p> <p>14 limitations that you believe should be placed on him?</p> <p>15 A. I didn't examine him.</p> <p>16 Q. Okay. Did you use any of the tests</p> <p>17 performed by SERC where they actually had him lift</p> <p>18 boxes and move and sit and stand?</p> <p>19 A. I did incorporate that into my opinions,</p> <p>20 yes.</p> <p>21 Q. But you think your restrictions are better</p> <p>22 than the ones done by SERC?</p> <p>23 MR. THOMPSON: Object. Misstates his</p> <p>24 testimony. He didn't say better or worse. He said</p> <p>25 his are different.</p>
<p style="text-align: right;">67</p> <p>1 activities, colon, and then there's four bullet</p> <p>2 points.</p> <p>3 A. Right. I pulled that from the</p> <p>4 September 12th, 2019 functional capacity evaluation</p> <p>5 done at SERC Physical and Hand Therapy.</p> <p>6 Q. Do you disagree with or are you critiquing</p> <p>7 any of those findings?</p> <p>8 A. No. I'm just regurgitating what they</p> <p>9 found.</p> <p>10 Q. And just generally in this case, are you</p> <p>11 going to critique any part of that functional</p> <p>12 capacity evaluation or what they found he could do?</p> <p>13 A. I'm not going to critique that, no.</p> <p>14 Q. Okay.</p> <p>15 A. I have my own opinions, but I'm not going</p> <p>16 to critique that.</p> <p>17 Q. You would agree with the limitations and</p> <p>18 abilities as listed on Page 8?</p> <p>19 A. Well, I'm not so sure I know, even, what</p> <p>20 they mean. So where it says in the heavy category,</p> <p>21 pushing and pulling, I don't know what that means.</p> <p>22 In the median category where it says low lift, I</p> <p>23 don't know what that means. In the light category,</p> <p>24 high lift, mid lift, full lift, carrying and overall</p> <p>25 strength, I don't know what that means. So I can't</p>	<p style="text-align: right;">69</p> <p>1 THE WITNESS: Right. I was going to</p> <p>2 disagree with your phrase better. I think mine, as</p> <p>3 an orthopedic surgeon -- I'm not a physical</p> <p>4 therapist. I'm an M.D., a surgeon. I was a</p> <p>5 qualified medical examiner for the State of</p> <p>6 California examining injured workers just like him</p> <p>7 with the same exact injuries to determine if they</p> <p>8 were capable of returning to work, and if so, what</p> <p>9 kind of permanent impairment, limits, and</p> <p>10 restrictions they had. And I was doing that for the</p> <p>11 State of California since 1989.</p> <p>12 I believe that my opinions, based on the</p> <p>13 surgical findings, the radiologic findings, the</p> <p>14 clinical findings, the subjective complaints, the</p> <p>15 overall case in whole, how he responded, exceeds the</p> <p>16 functional capacity evaluation based on a single</p> <p>17 functional capacity exam. And my opinion takes all</p> <p>18 of that into account. And I think mine is -- my</p> <p>19 opinion is what it is based on that of a medical</p> <p>20 doctor, a surgeon, a qualified medical examiner,</p> <p>21 looking at the entire case. Not just a single</p> <p>22 functional capacity exam.</p> <p>23 Q. When's the last time you did a qualified</p> <p>24 medical examination for the State of California?</p> <p>25 A. 2017.</p>

<p style="text-align: right;">70</p> <p>1 Q. How many did you do from 2013 to 2017?</p> <p>2 A. Hundreds.</p> <p>3 Q. How many that were back/spinal issues?</p> <p>4 A. The majority were back, yes.</p> <p>5 Q. Do you have records of those anywhere?</p> <p>6 A. Not anymore.</p> <p>7 Q. Dr. Bailey found that Mr. Stoneman had</p> <p>8 reached maximum medical improvement. Do you agree</p> <p>9 with that?</p> <p>10 MR. THOMPSON: I'm going to object to the</p> <p>11 question to the extent it used words and terminology</p> <p>12 that are unique to workmen's compensation claims, and</p> <p>13 are inconsistent with either the standard of care or</p> <p>14 the basis for an expert opinion in a civil case.</p> <p>15 THE WITNESS: Mr. Thompson's reading my</p> <p>16 mind. So maximal medical improvement means that</p> <p>17 Dr. Bailey's done everything he can do for -- that he</p> <p>18 could do for the man at the time and from a workers'</p> <p>19 compensation standpoint, has to consider him</p> <p>20 maximally improved. He's got no other treatment</p> <p>21 options at that point.</p> <p>22 BY MR. LESTER:</p> <p>23 Q. I guess my question for you is: Was there</p> <p>24 other treatment options at that point that should</p> <p>25 have been considered or done?</p>	<p style="text-align: right;">72</p> <p>1 A. Well, I agree with the restriction of 20</p> <p>2 pound -- yeah, I think mine was 10 pounds, if I</p> <p>3 remember right. So yes, I would disagree.</p> <p>4 Q. Okay. And you disagree about light work,</p> <p>5 correct?</p> <p>6 A. I'm pretty sure mine was -- let me just</p> <p>7 verify it. I think mine was sedentary.</p> <p>8 Yes, I do disagree.</p> <p>9 Q. All right. The surgeon who placed those</p> <p>10 work restrictions are the ones -- is the one who</p> <p>11 performed the surgery and met with Mr. Stoneman</p> <p>12 multiple times, correct?</p> <p>13 A. Can you rephrase, please?</p> <p>14 Q. Sure. The surgeon who actually placed</p> <p>15 Mr. Stoneman on work restriction of light work, 20</p> <p>16 pounds lifting or carrying, etc., as listed here, is</p> <p>17 the surgeon who actually performed the surgery on</p> <p>18 Mr. Stoneman and would have met with him multiple</p> <p>19 times; is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. Is there any medical records that you think</p> <p>22 you have that that surgeon would not have had?</p> <p>23 MR. THOMPSON: I would object. Misstates</p> <p>24 the record. Asks this witness to guess and speculate</p> <p>25 what Dr. Bailey did or did not have at his disposal</p>
<p style="text-align: right;">71</p> <p>1 MR. THOMPSON: Well, and to the extent you</p> <p>2 have now asked a new question, I would object because</p> <p>3 it misstates the record that Dr. Bailey did make</p> <p>4 specific recommendations and options available to</p> <p>5 this patient.</p> <p>6 THE WITNESS: The answer is yes.</p> <p>7 BY MR. LESTER:</p> <p>8 Q. What should Dr. Bailey have done?</p> <p>9 MR. THOMPSON: Objection. Misstates the</p> <p>10 record. He's not saying what Dr. Bailey should have</p> <p>11 done.</p> <p>12 BY MR. LESTER:</p> <p>13 Q. What treatment options -- well, I'll just</p> <p>14 move on.</p> <p>15 On Page 8, a paragraph starting with,</p> <p>16 Furthermore, Dr. Poppa indicates that Mr. Stoneman</p> <p>17 was evaluated by a surgeon and placed on work</p> <p>18 restrictions of light work. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. It's my understanding that your opinion --</p> <p>21 that your restrictions go further than that. Would</p> <p>22 you agree?</p> <p>23 A. I think so.</p> <p>24 Q. So you disagree with the work restrictions</p> <p>25 placed by Mr. Stoneman's treating physician?</p>	<p style="text-align: right;">73</p> <p>1 in making the opinions that he did regarding this</p> <p>2 patient's care.</p> <p>3 BY MR. LESTER:</p> <p>4 Q. I'm trying to ask if you know the reason</p> <p>5 for why you think the restrictions are more than what</p> <p>6 the treating surgeon believes.</p> <p>7 A. Well, when Dr. Bailey gave him those</p> <p>8 restrictions, that wasn't the end of this saga of</p> <p>9 Mr. Stoneman. His medical condition continued on.</p> <p>10 There's other things that are found and have to be</p> <p>11 taken into account when the overall permanent</p> <p>12 restrictions are assigned. Maybe at the time I'm --</p> <p>13 I don't know the answer, because I don't know what</p> <p>14 Dr. Bailey was thinking. But there's more to the</p> <p>15 case that exists subsequent to the time when he</p> <p>16 release him to return to work.</p> <p>17 Q. What was found between September 19th, 2019</p> <p>18 and June 14th, 2021 --</p> <p>19 A. He had -- I'm sorry.</p> <p>20 Q. I didn't mean to cut you off. You can</p> <p>21 answer.</p> <p>22 A. Yeah, I thought I cut you off.</p> <p>23 That his condition -- I'm not sure I can</p> <p>24 give you a specific piece of information that I can</p> <p>25 recall as I'm sitting here, off the top of my head.</p>

<p style="text-align: right;">74</p> <p>1 Q. You said that the case didn't stop when 2 Mr. Bailey -- when Dr. Bailey wrote his report on 3 September 19th, 2019 and that's why all of your 4 restrictions are essentially more limiting and more 5 restricted, so I'm trying to figure out what changed 6 between September 19th, 2019 and today that would 7 require more significant restrictions to be placed on 8 Mr. Stoneman. 9 MR. THOMPSON: I object. That misstates 10 the doctor's testimony here today. He didn't -- 11 you're assuming what he's basing his increased or 12 more significant restrictions on. 13 BY MR. LESTER: 14 Q. Well, then do you disagree with the 15 restrictions that Dr. Bailey placed in September of 16 2019? Do you think they were inappropriate? 17 A. I -- yes, I think they were inappropriate 18 for the condition at the time. There was a known 19 persistent disk fragment. There was a known 20 persistent or recurrent disk herniation. The man was 21 highly symptomatic. There was radiologic evidence of 22 swelling of the S1 nerve root. Mr. Stoneman at the 23 time did not want to go through another operation, so 24 Dr. Bailey had no chance to do anything else. So he 25 declared him maximally medically improved and</p>	<p style="text-align: right;">76</p> <p>1 THE WITNESS: I don't -- my personal 2 opinion is based on the totality of this case. 3 You're asking me to disown what I know about the 4 entire case and look at a -- 5 BY MR. LESTER: 6 Q. Well, that's what I tried to get you -- 7 that's what I've tried to -- 8 MR. HOU: Hold, hold, hold. Don't 9 interrupt him. 10 THE WITNESS: You're asking me to look at a 11 small portion of this case where Dr. Bailey was in a 12 position in a workers' compensation environment where 13 he could do nothing more for his patient. Because 14 the patient didn't want to have another operation, 15 for whatever reasons. And it's the patient's choice, 16 of course. And Dr. Bailey at that point said, Okay, 17 you're maximally medically improved, and he released 18 him. I don't agree, based on the totality of this 19 case and the facts that I know, that that was an 20 appropriate release with appropriate restrictions and 21 limitations, given the objective pathology and what 22 the man had just gone through surgically. 23 BY MR. LESTER: 24 Q. Okay. I feel like we're saying the same 25 thing. But you're prefacing your sentences with no,</p>
<p style="text-align: right;">75</p> <p>1 released him to return to work with restrictions. I 2 don't agree with those restrictions, given the 3 objective findings at the time as well as the 4 subjective complaints of the patient at the time. 5 Q. I think that is different than what you 6 said earlier, because my understanding earlier was 7 that you agreed with the restrictions at the time, 8 but then testified that things had changed. But -- 9 MR. THOMPSON: I object. It's your 10 interpretation. It's not what he testified to. 11 BY MR. LESTER: 12 Q. Okay. So it's your testimony that the 13 restrictions placed by Dr. Bailey in September of 14 2019 were wrong at that time? 15 MR. THOMPSON: I object. He didn't say 16 wrong. 17 BY MR. LESTER: 18 Q. Were not restricted enough. They were 19 improper and he should have been more restricted? 20 MR. THOMPSON: I object. That misstates 21 the record. This is one doctor's opinion versus 22 another doctor's opinion based on their unique 23 experiences professionally. You keep trying to put 24 words in his mouth, Michael, and testify for him. 25 Let him testify.</p>	<p style="text-align: right;">77</p> <p>1 you don't agree with me. So you do not believe that 2 the limitations outlined on Paragraph 8 with work 3 restrictions of light duty work were correct and 4 proper for that time? 5 MR. THOMPSON: I object. That's not his 6 testimony. He hasn't given a correct and proper. 7 Use the wording he has used and you won't draw an 8 objection. 9 THE WITNESS: So I disagree with the 10 release to return to work with the restrictions that 11 were given to the man at the time. 12 BY MR. LESTER: 13 Q. Okay. And then you said it's very 14 difficult, and I understand this, to separate what 15 you know of the entire case from what may have been 16 available then. But what I was trying to suss out 17 earlier is, what has changed between September of 18 2019 and today? Have any of the pathologies changed? 19 MR. THOMPSON: Objection, as a compound 20 question. You've asked two questions in that. Are 21 you asking did his medical care cease? He was seen 22 by other doctors after that. 23 BY MR. LESTER: 24 Q. Are there any scans that show a change? 25 A. One second.</p>

<p style="text-align: right;">78</p> <p>1 I'm not aware of any subsequent MRI or CT 2 scans that were done after the last one that showed 3 the persistent disk herniation or fragment. And by 4 the way, that subsequent postoperative MRI measures 5 the remaining pathological disk at 1.1 centimeter. 6 The surgery was done for a disk that was half that 7 size, .5 centimeter. So he has twice as big of a 8 fragment or recurring disk herniation sitting at 9 L5/S1. And has something changed since the surgery? 10 Yes. Has something changed since Dr. Bailey released 11 him? Yes. The presence of this 1.1 centimeter 12 herniated disk sitting in the L5/S1 disk space has 13 caused a man to suffer from persistent low back pain, 14 dysfunction, discogenic referred pain down in the 15 left lower extremity, inability to move and lift 16 correctly, and to do all of the things which I 17 discussed in my report. 18 So all of those things existed after 19 Dr. Bailey attempted to release him back to work The 20 man's pain continued to get work, and objectively 21 there's a reason to explain that. It's on that MRI 22 scan after the surgery. He underwent additional 23 injection treatments to try and deal with that. He 24 underwent -- and he was stuck in the work comp 25 system, so his treatments were not occurring very</p>	<p style="text-align: right;">80</p> <p>1 A. Yes. 2 Q. There's no opinion that you currently hold 3 that's not listed somewhere in this report, is that 4 fair? 5 A. Correct. 6 Q. You are not going to be giving any opinions 7 about the cost of any future medical treatment, 8 correct? 9 A. Correct. 10 Q. Do you agree with me that that's best left 11 for a lifecare planner? 12 A. Correct. 13 Q. And you would agree with me that you're not 14 a qualified lifecare planner, you have no training or 15 experience in that field? 16 MR. THOMPSON: I would object. That 17 misstates the record, misstates his background, and 18 assumes that he couldn't offer opinions regarding the 19 cost of these procedures. There is another expert in 20 this case who is specifically a lifecare planner and 21 offering those opinions. That doesn't mean that this 22 doctor can't do it as well. He's just not doing it. 23 If you want to head down that road, then you're going 24 to open up the door to his testimony on this as well. 25 If you're going to elicit those opinions from him,</p>
<p style="text-align: right;">79</p> <p>1 expeditiously, and with Dr. -- I'm not sure if it's 2 "Pope-a" or "Pop-a" -- but nevertheless he was on 3 narcotics and neurogenic pain medications and chronic 4 pain medication to try and deal with this condition. 5 And it wasn't a condition that is unsupported by a -- 6 without objective findings. It's a condition that's 7 completely explainable by this large 1.1 centimeter 8 either recurrent disk herniation or disk fragment 9 that was left in there at L5/S1. That, without 10 exception, will explain why the man is not doing 11 well, continues to do poorly, continues to have pain, 12 needed further care, has significant restrictions. 13 And those are all conditions that existed after 14 Dr. Bailey tried to release him to return to work 15 with some restrictions that really were not 16 sufficient for the condition at hand. 17 And so there's a lot of things going on in 18 this case after Dr. Bailey released him that explain 19 what's going on and why he shouldn't have been 20 released back to work at the time. 21 Q. On Page 9 of your report, I believe it's 22 your opinions that start -- would you agree with me 23 that Pages 9 through 11 of your report contain all of 24 the opinions that you have in this case as of right 25 now, understanding discovery is still ongoing?</p>	<p style="text-align: right;">81</p> <p>1 Michael, then do it at your own peril. 2 BY MR. LESTER: 3 Q. You testified in the Straw case that any 4 future medical care estimates that you gave would 5 just be estimates and that a lifecare planner would 6 be better qualified and suited to actually provide 7 the costs. Do you remember that testimony? 8 MR. THOMPSON: Objection, improper 9 impeachment. If you're attempting to impeach this 10 witness, then show him the testimony. Certainly 11 seems like a waste of time since he's not being 12 offered at this time for those opinions in this case. 13 MR. LESTER: Sure. This will be quick. 14 BY MR. LESTER: 15 Q. This is your testimony you would rely on a 16 lifecare planner -- you say, I would rely on a 17 lifecare planner to do that, in response to my 18 question about costs in Miss Straw's lawsuit. Same 19 in this lawsuit, fair? 20 A. Correct. 21 Q. Do you have any reason to disagree with 22 your April self that you would rely on a lifecare 23 planner when discussing future costs? 24 A. No. My testimony there was pretty accurate 25 that I could give estimates, but a lifecare planner</p>

<p style="text-align: right;">82</p> <p>1 would be more accurate.</p> <p>2 Q. Okay. We've already discussed a lot of</p> <p>3 these opinions so I'm not going to touch on all of</p> <p>4 them.</p> <p>5 The bullet point second from the bottom,</p> <p>6 Mr. Stoneman ultimately had recurrence of a disk</p> <p>7 herniation or retained fragment of disk at the L5/S1</p> <p>8 level. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. As we sit here today, is it fair to say</p> <p>11 that you don't know what caused or why he potentially</p> <p>12 had that recurrence or retained fragment? Is it just</p> <p>13 we can't -- we don't know?</p> <p>14 MR. THOMPSON: I object. That is</p> <p>15 inconsistent with his testimony as to why that</p> <p>16 fragment exists.</p> <p>17 THE WITNESS: So I don't agree with what</p> <p>18 you're saying.</p> <p>19 BY MR. LESTER:</p> <p>20 Q. Okay.</p> <p>21 A. We don't have a basis to know what's going</p> <p>22 on here. First of all, the L5/S1 disk suffered a</p> <p>23 severe -- I'm going to use the word explosive type of</p> <p>24 pressure that caused the posterior aspect of the disk</p> <p>25 to blow out. Dr. Bailey specifically wrote in his</p>	<p style="text-align: right;">84</p> <p>1 A. And there was disk material left behind.</p> <p>2 So those are substantial reasons that could lead to a</p> <p>3 retained fragment or return herniation.</p> <p>4 Q. I understood. So those are possibilities,</p> <p>5 but you couldn't tell me which one of those two</p> <p>6 happened, or if something else happened. Is that</p> <p>7 fair?</p> <p>8 A. I don't know what you mean by something</p> <p>9 else.</p> <p>10 MR. THOMPSON: Doctor, let me object. I'm</p> <p>11 sorry. I was on mute.</p> <p>12 I object because it misstates the</p> <p>13 testimony. The doctor's opinion is that to a</p> <p>14 reasonable degree of medical certainty, the</p> <p>15 recurrence is directly related to the original injury</p> <p>16 and the physiological changes. That's pretty damn</p> <p>17 clear in his report and in his testimony today.</p> <p>18 MR. LESTER: I'm just trying to suss out</p> <p>19 whether or not -- the objection is noted. The doctor</p> <p>20 doing a good job of speaking for himself. I'm sure</p> <p>21 he'll say the same thing that you are.</p> <p>22 BY MR. LESTER:</p> <p>23 Q. You can't tell me that Dr. Bailey left --</p> <p>24 you were just talking about where he might have left</p> <p>25 a piece of fragment because he was unable to find it.</p>
<p style="text-align: right;">83</p> <p>1 operative report he didn't have to use a scalpel to</p> <p>2 get the disk out. And I've been there. I know what</p> <p>3 he means. I know what that is. There was already a</p> <p>4 big hole there. It blew itself out of the back end</p> <p>5 of the disk space leaving a big hole. So that</p> <p>6 Dr. Bailey, all he had to do was reach in with his</p> <p>7 instruments to remove the fragments of the disk that</p> <p>8 had blown out there.</p> <p>9 So when you have that kind of an injury,</p> <p>10 you can have more fragments of the disk that are</p> <p>11 buried deeper in the disk space that don't get pulled</p> <p>12 out by the surgeon because you can't see in the disk</p> <p>13 space. You're basically going in and feeling your</p> <p>14 way around. And some of those can be left in there.</p> <p>15 That would be one reasonable explanation for a</p> <p>16 retained fragment.</p> <p>17 Q. Wait --</p> <p>18 A. The second reason --</p> <p>19 Q. Wait. Why?</p> <p>20 A. The second reason is is that the disk was</p> <p>21 severely injured. And once it was severely injured</p> <p>22 and it lost its structural integrity, it could also</p> <p>23 re-herniate again because all of the disk material</p> <p>24 was not removed by the surgeon.</p> <p>25 Q. Yeah.</p>	<p style="text-align: right;">85</p> <p>1 We don't know. Is that fair?</p> <p>2 A. Yeah, I just want to be careful. I'm not</p> <p>3 trying to imply that it's negligent on the part of</p> <p>4 Dr. Bailey to not take out all the fragments. This</p> <p>5 is a common problem.</p> <p>6 Q. Uh-huh.</p> <p>7 A. It's not a medical negligence issue. It</p> <p>8 happens.</p> <p>9 Q. Right.</p> <p>10 A. So that's -- but I can't say whether or not</p> <p>11 he left a fragment in or not.</p> <p>12 Q. And you can't say for sure whether or not</p> <p>13 the disk re-herniated at a later date. It's a</p> <p>14 possibility it's not. You can't point to anything</p> <p>15 that says he absolutely re-herniated it at this</p> <p>16 stage.</p> <p>17 A. Well, by the time of the subsequent MRI</p> <p>18 scan, it was either re-herniated or there was a disk</p> <p>19 fragment left in. But I can't say which of the two.</p> <p>20 Q. You can't say which of the two, you can't</p> <p>21 say how it happened, you can just say that</p> <p>22 something's there. Is that fair?</p> <p>23 MR. THOMPSON: Objection. That misstates</p> <p>24 his testimony. He is testifying as to how it</p> <p>25 eventually happens.</p>

<p style="text-align: right;">86</p> <p>1 THE WITNESS: Yeah, I can -- I've already 2 explained that. 3 BY MR. LESTER: 4 Q. You've explained it -- you have explained 5 possibilities for how it may have happened. And I'm 6 with you and I understand that you're saying it's to 7 a reasonable -- James, I understand -- to a 8 reasonable degree of medical certainty. But you 9 can't -- you've offered two options and they are 10 exclusive of each other, aren't they? 11 MR. THOMPSON: I would object. It 12 misstates the testimony based on how you've asked the 13 question. The doctor's opinion is to a reasonable 14 degree of medical certainty. The subsequently he 15 used -- 16 MR. LESTER: James -- 17 MR. THOMPSON: -- trail back to the 18 original -- 19 MR. LESTER: -- he can speak for himself. 20 MR. THOMPSON: You know what? When you 21 keep misstating him, when you keep changing words 22 he's used and use what apparently you think, you 23 know, are synonyms, and they're not. In this 24 situation, he is saying, has said in his report, that 25 the need and what physiological changes resulted from</p>	<p style="text-align: right;">88</p> <p>1 THE WITNESS: I would disagree. I believe 2 Dr. Bailey recommended an anterior decompression and 3 fusion at that level. 4 BY MR. LESTER: 5 Q. Could you find where you think he 6 recommended that? 7 A. Sure. Again, I only have the summary here. 8 But in my report -- let me just look at it real 9 quick. 10 Q. It's my understanding -- and please feel 11 free to correct me if you have something wrong -- if 12 he did talk with Mr. Stoneman about doing a fusion, 13 that it was his opinion that a decompression would 14 not be helpful. If you have a reason to dispute that 15 understanding, I'm happy to look at the record. 16 A. I don't have the records in front of me to 17 show it to you. But let me just see if my notes 18 here -- my report, I'm sorry -- helps me remember. 19 So we're talking about Dr. Bailey's visit 20 with Mr. Stoneman on July 25, 2019, because that's 21 where the discussion took place about having 22 additional surgery, which would be an 23 anterior/posterior lumbar spinal fusion. Now, as a 24 surgeon, an anterior/posterior lumbar spinal fusion 25 includes decompression of the disk. By nature of the</p>
<p style="text-align: right;">87</p> <p>1 the original incident are all linked to the 2 subsequent issues and problems. Regardless of 3 whether it's one or the other. 4 BY MR. LESTER: 5 Q. And you cannot, Dr. Graboff, you cannot 6 pinpoint whether it is one or the other? 7 A. Correct. 8 Q. Could any -- could an incident have caused 9 a re-herniation? 10 A. Sure. 11 Q. If Mr. Stoneman goes out and falls down or 12 is in another motor vehicle accident, tries to lift 13 something, could that have been the cause of the 14 subsequent re-herniation? 15 MR. THOMPSON: Objection. Incomplete 16 hypothetical. Lacks sufficient facts to formulate 17 opinion. Asks for speculation. 18 THE WITNESS: Subsequent trauma can lead to 19 additional herniations, I would agree. 20 BY MR. LESTER: 21 Q. Okay. Would you agree with me that 22 Dr. Bailey said that he did not believe that there 23 needed to be another decompression of the L5/S1? 24 MR. THOMPSON: Objection. Misstates the 25 record.</p>	<p style="text-align: right;">89</p> <p>1 actual surgery, you're removing the entire disk and 2 you're fusing it together, so you're completely 3 decompressing it. I do not recall any statement -- 4 and if it's there, then it's there. But I don't 5 recall a statement that says further decompression 6 would be of any benefit. By nature of the 7 procedure -- spinal fusion anterior/posterior lumbar 8 spinal fusion, by nature of that operation, you have 9 no choice but to do a full decompression. So I will 10 accept the fact that if there's a statement in the 11 record, that's what he said. But it wouldn't make 12 any sense because he would be decompressing it. 13 Q. Sure. You, for instance, you -- and we get 14 into your future medical care. You have, I believe, 15 suggested two different surgeries. First, a 16 decompression. And then if needed a fusion. Is that 17 correct? 18 A. Correct. 19 Q. And so if Dr. Bailey, if the records show 20 that Dr. Bailey said just the decompression -- if you 21 go in and do a decompression without a fusion, I 22 don't think it would be of any help and there's no 23 use, you would disagree with that? 24 A. I would disagree with that, yes. 25 Q. Is that a thing that reasonable surgeons</p>

<p style="text-align: right;">90</p> <p>1 can disagree on? Or do you have information that you 2 think he wouldn't have had? Do you know why that 3 disagreement exists? 4 MR. THOMPSON: Objection. Compound. 5 THE WITNESS: Well, I don't know why the 6 disagreement exists. I don't know if Dr. Bailey has 7 looked at the same material as I've looked at. But 8 let me put it to you -- let me put it to you the way 9 I would put it to the jury. If you have a rock in 10 your shoe by your heel and every time you step on it, 11 it hurts your heel, would you fuse your shoe to your 12 heel so the shoe doesn't move anymore? Or would you 13 open up the shoe and dump out the rock and get on 14 with your life? So I don't know why Dr. Bailey 15 wouldn't take the easy way, which would be to just 16 decompress it and get rid of that remaining 17 herniation or fragment and see how well Mr. Stoneman 18 does, because you can always come back and do a 19 fusion. But once you do the fusion, that's 20 permanent, and that leads to additional problems 21 later on. So I'd have no clue as to why Dr. Bailey 22 would not offer that option, which is easily done, 23 can even be done microscopically, and wouldn't do any 24 harm to the patient. 25 Q. Okay. I'm looking at your future medical</p>	<p style="text-align: right;">92</p> <p>1 possible that that would relieve or largely relieve 2 all of the symptoms that he is complaining of in 3 these medical records? 4 A. It's possible there could be a significant 5 reduction, but it would be only temporary. The 6 problem we have now with this case as it has evolved 7 is that there was -- and it's -- I have really 8 detailed it in the report, but I'll just paraphrase 9 it. There was no evidence of L3-4 -- I'm sorry, L4-5 10 disk pathology initially, in 2018. But there was 11 subsequently -- after the surgery, there's evidence 12 on the subsequent MRI that the L4-5 disk is now 13 abnormal. There was no degeneration of the disk at 14 L5/S1 at the time of the initial injury. But because 15 of the nature of the blowout that occurred at L5/S1, 16 that disk space is now degenerated. 17 So it's really not medically probable that 18 just going in now and doing a full decompression is 19 going to cure him forever. I think it will help, and 20 there's nothing like giving somebody more time to 21 have an enjoyable life. But I think because of the 22 pathology that's developed at L5/S1 due to the injury 23 and the subsequent pathology that's developed at L4-5 24 due to the original injury and surgery that he's 25 going to need to have those areas eventually fused.</p>
<p style="text-align: right;">91</p> <p>1 care on Page 10 of 12. Do you see where you start 2 the bullet points there? 3 A. Yes. 4 Q. Do you have any specific training or 5 education in chronic pain management that you've had 6 in the last 25 years? 7 A. I have. 8 Q. What is that? 9 A. Well, it was part of my general training as 10 an orthopedic surgeon. I don't know if you've ever 11 broken a bone before, but they're really painful. 12 People that have chronic spinal conditions have 13 chronic pain, and orthopedic surgeons like myself 14 treat them. People have chronic neck pain. Joint 15 pain from arthritis, that's chronic. So it's just 16 part and parcel with learning to be an orthopedic 17 surgeon, how to treat people with chronic pain. 18 Would I consider myself a chronic pain specialist? 19 The answer is no. I'm not a chronic pain specialist. 20 But I do have the training. I have done it for my 21 entire career as an orthopedic surgeon. I've treated 22 patients chronically for pain. So the answer is yes. 23 Q. Bullet point Number 3, can you explain -- I 24 guess let me ask this: If he does the decompression 25 listed in Number 2, in bullet point Number 2, is it</p>	<p style="text-align: right;">93</p> <p>1 Q. Based on your history and the surgeries 2 that you've performed, could you assign any percent 3 chance or estimate chance about whether or not the 4 decompression would lead to a -- helping the 5 plaintiff's symptoms? 6 A. All I can say is it's medically possible 7 that it will help his symptoms temporarily. 8 Q. When you say temporarily, can you provide 9 any time range for how long it would help? 10 A. I'm going to give a best estimate of about 11 five years. Maybe a little longer. If it works at 12 all. But because of the degeneration at L5/S1 and 13 the disk pathology at L4-5 now, I'm not very 14 confident, I don't have high hopes that it will help 15 him. But as I said a minute ago when I testified 16 about it, it's such a simple operation to do. It's 17 not going to do him any harm to take out this piece 18 that's still in there. And let's see if it helps him 19 for awhile so he can get off the narcotics, so he can 20 get out of the pain injection treatments. And see if 21 it helps him for awhile. I think it would benefit 22 his lifestyle and his life, quality of life. It's a 23 simple thing to do. But it's not going to be 24 curative and he's still going to wind up going down 25 the rabbit hole of needing further surgeries.</p>

<p style="text-align: right;">94</p> <p>1 Q. All right. Bullet point three you talk 2 about the fusions. When do you believe he'll need 3 those? 4 A. That's going to be within 10 years. And 5 I'm saying that with the assumption that he undergoes 6 the removal of the remaining fragment or recurrent 7 herniation relatively quickly. If he doesn't do 8 that, it may occur sooner, the fusion. Maybe within, 9 you know, seven years, eight years. But for sure by 10 10 years out, I don't think that that disk is going 11 to -- disk space at L5/S1 is going to survive. It's 12 going to need to be fused. 13 Q. Fourth bullet point, you talk about spinal 14 implants. What is that? 15 A. So actually the last two bullet points go 16 together. There's two kinds of spinal implants. 17 There's a spinal cord stimulator, which is an 18 electrical device. And in layman's terms, it's a 19 minor surgical procedure where electrodes are placed 20 into the spinal cord area. In his case, it would be 21 around the L5/S1 area. And what the electrical 22 device does is it causes interference with the 23 transmission of nerve impulses in the spinal cord. 24 And that will reduce his failed spine surgery pain 25 syndrome, his failed laminectomy syndrome. It'll</p>	<p style="text-align: right;">96</p> <p>1 to remember. Best estimate, somewhere at least in 2 the range of 50. Five-zero. 3 Q. Five-zero. What about the spinal cord pain 4 pump? 5 A. I don't really know. The reason I don't 6 know is because once I referred them out, then I 7 would leave it up to the physician I referred to, the 8 neurosurgeon or the pain management specialist, to 9 either go with the pain pump or the nerve stimulator. 10 So I really don't know the answer to the second part 11 of your question. 12 Q. What about when you were a clinician? So 13 after you were done with surgery but you're just 14 seeing patients, how many of your -- can you give me 15 a percent of spine patients that end up getting a 16 spinal implant of any kind? 17 A. Best estimate would be about 10 percent. 18 Q. And (unintelligible) -- is the only time 19 you'd use a spinal implant? 20 A. I'm sorry, maybe you cut out? I don't 21 know. 22 Q. I think we need to go off the record real 23 fast. 24 MR. THOMPSON: We've been going about an 25 hour. I don't know how much -- or a little over an</p>
<p style="text-align: right;">95</p> <p>1 hopefully block or interfere with the transmission of 2 pain signals from L5/S1 up to his brain. That's what 3 a spinal stimulator will do. 4 If that fails and doesn't work for him, 5 then the last bullet point is the other spinal 6 implant option, which is a basically a pain pump 7 which is implanted in the body. And it's filled up 8 with various solutions and narcotics, or sometimes 9 nonnarcotic pain medications, and that's delivered by 10 catheter directly to the area where the pain is 11 coming from. In his case, L4-5 L5/S1 level. That 12 would be the last -- the last resort. You wouldn't 13 want to start giving somebody a permanent implantable 14 narcotic device for the rest of their life if you can 15 avoid it. 16 Q. How many of your patients did you ever put 17 a spinal implant into, the electrical one? 18 A. I personally never put any in. I always 19 referred -- I always referred these patients out to a 20 neurosurgeon or to a pain management specialist to 21 have it done. 22 Q. How many of your patients did you refer out 23 to others to have a spinal cord stimulator put in? 24 A. So, you know, keeping along with what I 25 answered earlier, it's a long time ago and it's hard</p>	<p style="text-align: right;">97</p> <p>1 hour. 2 MR. LESTER: I was trying to push through 3 because I think we've only got.... 4 VIDEOGRAPHER: We're now going off the 5 record. The time is 1:43. 6 (Recess) 7 VIDEOGRAPHER: We're now going back on the 8 record. The time is 1:50. 9 BY MR. LESTER: 10 Q. Dr. Graboff, if we switch back to Page 9 11 quickly, I just want to go to the very first bullet 12 point that you have there. 13 A. Okay. 14 Q. If you had heard or seen testimony that 15 Mr. Stoneman potentially spent an hour after the 16 accident trying to lift an object that was too heavy 17 for him to carry, would that change any of your 18 opinions about how the herniated disk may have 19 occurred? 20 MR. THOMPSON: I object. That misstates 21 the record in this case. 22 THE WITNESS: Can you just go ahead and 23 rephrase that one more time? I'm trying to follow 24 along. 25 //</p>

<p style="text-align: right;">98</p> <p>1 BY MR. LESTER:</p> <p>2 Q. Sure. I want you to assume for the</p> <p>3 purposes of this question that Mr. Stoneman spent</p> <p>4 between 30 minutes and an hour following the accident</p> <p>5 attempting to lift something up that was too heavy</p> <p>6 for him to carry.</p> <p>7 MR. THOMPSON: I object. It misstates the</p> <p>8 record and it fails to provide this witness</p> <p>9 additional information to formulate an opinion.</p> <p>10 Based on the misstatement of the facts you've made,</p> <p>11 apparently assumes that he weren't just rear-ended by</p> <p>12 a semi.</p> <p>13 BY MR. LESTER:</p> <p>14 Q. With the assumptions that I just put in</p> <p>15 place, would that change any of your opinions about</p> <p>16 what may or may not have caused the herniated disk?</p> <p>17 MR. THOMPSON: Same objection.</p> <p>18 THE WITNESS: In order for me to say it</p> <p>19 might change my opinion, or affect my opinion, or</p> <p>20 need to be considered in my opinion, I would need to</p> <p>21 know whether there was any effect to Mr. Stoneman</p> <p>22 when he was trying to lift whatever object you're</p> <p>23 referring to. Did it -- did it cause a sudden change</p> <p>24 in his symptoms? Did it cause new symptoms? Did it</p> <p>25 not cause any symptoms? Just in general, because</p>	<p style="text-align: right;">100</p> <p>1 Mr. Stoneman did or did not have pain that he</p> <p>2 attributes to the motor vehicle accident on the day</p> <p>3 of the accident?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Where is that?</p> <p>6 A. Well, I just started looking at my report</p> <p>7 under the Brief Case Summary, and again I don't have</p> <p>8 the records in front of me, but when he was seen at</p> <p>9 Corporate Care Occupational Medicine Clinic, in their</p> <p>10 history of illness -- I have it in quotes, which</p> <p>11 means I took it verbatim from their record --</p> <p>12 moderate to -- in regards to his pain -- moderate to</p> <p>13 intense; it has been eight days since the onset of</p> <p>14 the pain. That would make it from the day of the</p> <p>15 accident.</p> <p>16 Q. And if you go down further, do you see the</p> <p>17 paragraph that starts with on August 28th, 2018?</p> <p>18 A. Yes.</p> <p>19 Q. And again you have in quotes, He began</p> <p>20 experiencing pain one to two days after the accident.</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. So inconsistent statements, or inconsistent</p> <p>24 records, at least?</p> <p>25 A. Those would be, correct.</p>
<p style="text-align: right;">99</p> <p>1 we've already talked about it, lifting heavy things</p> <p>2 can cause disk herniations. In general, the answer</p> <p>3 would be, sure, it would be something to take into</p> <p>4 account. But the medical facts from your question</p> <p>5 are completely missing so I have no way of using it</p> <p>6 as a -- in my analysis unless I had the medical facts</p> <p>7 associated with the event.</p> <p>8 BY MR. LESTER:</p> <p>9 Q. Sure. Well, you would agree with me that</p> <p>10 Mr. Stoneman did not seek treatment of any kind on</p> <p>11 the day of his accident, right?</p> <p>12 A. Correct.</p> <p>13 Q. And in fact, I believe he reported that he</p> <p>14 didn't feel any pain at all the day of the accident,</p> <p>15 correct?</p> <p>16 A. I don't recall that.</p> <p>17 Q. Do you recall one way or another whether he</p> <p>18 testified about having pain that he associates from</p> <p>19 the motor vehicle collision on the day of the</p> <p>20 accident?</p> <p>21 A. I didn't read his testimony.</p> <p>22 Q. Or from the medical records that you</p> <p>23 reviewed?</p> <p>24 A. Okay. So rephrase, please.</p> <p>25 Q. Do you recall seeing anything about whether</p>	<p style="text-align: right;">101</p> <p>1 Q. Okay. If there are other records --</p> <p>2 well --</p> <p>3 A. I thought there was another entry</p> <p>4 somewhere, and that's what I was looking at. Looking</p> <p>5 for, I mean. Let me just finish looking for one</p> <p>6 second, please.</p> <p>7 The Mid-America Orthopedics records, they</p> <p>8 indicate that the -- and I have it in quotes -- that</p> <p>9 the work injury, which would be the motor vehicle</p> <p>10 accident, is the likely prevailing cause of the</p> <p>11 current symptoms, which....</p> <p>12 Q. If Mr. Stoneman didn't tell any of his</p> <p>13 doctors about him lifting a heavy object, then none</p> <p>14 of them would have any way to know about it, right?</p> <p>15 MR. THOMPSON: Objection. Misstates the</p> <p>16 record. Let the witness finish his response instead</p> <p>17 of interrupting him.</p> <p>18 THE WITNESS: And I missed the first part</p> <p>19 of that.</p> <p>20 BY MR. LESTER:</p> <p>21 Q. Well, nowhere in the records did you see</p> <p>22 anything where Mr. Stoneman told or informed any of</p> <p>23 his treating physicians about the fact that he</p> <p>24 allegedly was lifting a heavy object or attempting to</p> <p>25 lift a heavy object following the accident, correct?</p>

<p style="text-align: right;">102</p> <p>1 A. I did not see that, correct.</p> <p>2 Q. So none of these doctors would have any way</p> <p>3 of associating anything about with that unless</p> <p>4 Mr. Stoneman had told them. Fair?</p> <p>5 A. Correct.</p> <p>6 Let me just finish looking at that -- for</p> <p>7 that other question you asked.</p> <p>8 So when he first saw Dr. Bailey on</p> <p>9 October 22nd, 2018, Dr. Bailey described the work</p> <p>10 accident -- work-related accident, being hit by the</p> <p>11 semi, and he indicated that Mr. Stoneman did not</p> <p>12 think he was significantly hurt but reported the</p> <p>13 accident. And the next day, it was worse. So again,</p> <p>14 there's another entry here which is indicating that</p> <p>15 the symptoms began the day of the accident.</p> <p>16 Almost done.</p> <p>17 That's it. That's all I could find.</p> <p>18 Q. Nothing in the records that you saw that</p> <p>19 would indicate whether any of his symptoms started</p> <p>20 one minute after the accident versus one hour after</p> <p>21 the accident versus five hours after the accident; is</p> <p>22 that fair?</p> <p>23 A. That's fair.</p> <p>24 Q. So knowing that, is it possible that</p> <p>25 lifting and movement after the accident could have</p>	<p style="text-align: right;">104</p> <p>1 hours they become highly symptomatic, or 36 hours</p> <p>2 they become highly symptomatic. I've seen that</p> <p>3 hundreds of times in my practice. So everything</p> <p>4 makes sense here. And your hypothetical that he</p> <p>5 lifted something heavy that caused all this shows up</p> <p>6 nowhere. So I can't put any value to that.</p> <p>7 BY MR. LESTER:</p> <p>8 Q. Sure. Because you didn't read any of the</p> <p>9 depositions. Fair?</p> <p>10 A. Not fair. Because as I said at the</p> <p>11 beginning, I wouldn't rely on the deposition of</p> <p>12 someone who is in a legal battle years later. I rely</p> <p>13 on the contemporaneously-created medical records</p> <p>14 before there is a legal battle. And they're not</p> <p>15 being deposed.</p> <p>16 Q. This is a work comp case and a work comp</p> <p>17 treatment, right?</p> <p>18 A. I'm sorry?</p> <p>19 Q. This is a -- all of his treatment is work</p> <p>20 comp in this one, correct?</p> <p>21 A. The records I reviewed were all workers'</p> <p>22 comp.</p> <p>23 Q. So on Page 11, the second bullet point from</p> <p>24 the top, you recommend psychological/psychiatric</p> <p>25 support. Do you see that?</p>
<p style="text-align: right;">103</p> <p>1 potentially caused a herniated disk?</p> <p>2 MR. THOMPSON: Objection. Incomplete</p> <p>3 hypothetical. Fails to provide sufficient facts or</p> <p>4 information for this witness to formulate a response.</p> <p>5 THE WITNESS: So anything's possible.</p> <p>6 Meaning he could have been hit by a meteor for all I</p> <p>7 know. The records tell me what they tell me.</p> <p>8 They're all very consistent. They all make sense.</p> <p>9 There's nothing unusual here. I didn't see any</p> <p>10 entries about lifting. He saw multiple</p> <p>11 practitioners. If it had come up, I would have made</p> <p>12 mention of it. It would have been part of my</p> <p>13 assessment, my forensic assessment. It's not here.</p> <p>14 But from an orthopedic biomechanical</p> <p>15 standpoint, the accident could have reasonably led to</p> <p>16 the injuries sustained. The injuries sustained is</p> <p>17 well-documented and found to be present. It's not</p> <p>18 unusual for patients to have acute herniated disks,</p> <p>19 to have the delayed onset of symptoms, especially</p> <p>20 radicular symptoms. It usually takes a day or so,</p> <p>21 maybe a little less than a day, for the nerve root to</p> <p>22 be compressed enough to be irritated and cause</p> <p>23 radicular symptoms down in the lower extremity. And</p> <p>24 many patients think they just have a sore back when</p> <p>25 in reality they've blown out a disk. And within 24</p>	<p style="text-align: right;">105</p> <p>1 A. Yes.</p> <p>2 Q. Did you see that recommendation from any</p> <p>3 one of his treating providers?</p> <p>4 A. No.</p> <p>5 Q. Your -- the next section of your report is</p> <p>6 injuries and restrictions. One, two, three, four.</p> <p>7 Your fifth bullet point talks about, His overall</p> <p>8 condition is not consistent with him being able to</p> <p>9 continue his usual and customary occupation as a</p> <p>10 truck driver. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Are you -- do you have any experience as a</p> <p>13 vocational rehab expert?</p> <p>14 A. Not as a vocational rehab expert, no.</p> <p>15 Q. Any training in vocational rehabilitation</p> <p>16 or vocational placement?</p> <p>17 A. No.</p> <p>18 Q. Are you going to be offering any opinions</p> <p>19 about Mr. Stoneman's vocational abilities and</p> <p>20 employment opportunities beyond the restrictions that</p> <p>21 you've identified?</p> <p>22 A. No.</p> <p>23 Q. Are you familiar with the FMCSR?</p> <p>24 A. Not those letters, no.</p> <p>25 Q. Okay. Have you ever -- do you know what</p>

<p style="text-align: right;">106</p> <p>1 the medical requirements to operate a commercial 2 motor vehicle are? 3 MR. THOMPSON: I would object to the 4 extent -- are you asking him what the requirements 5 are under the Federal Motor Carrier Safety 6 Administration's Regulations? 7 BY MR. LESTER: 8 Q. Sorry. I will rephrase and ask a better 9 question because there's a lot of requirements that 10 would be outside your field. 11 Do you know what the medical requirements 12 to operate a commercial motor vehicle are? 13 MR. THOMPSON: Again, same objection, 14 without reference to any specific source. If you're 15 talking about under the Federal Motor Carrier Safety 16 Administrations Regulations, are you talking about 17 custom and practice in the industry? Are you 18 talking -- 19 BY MR. LESTER: 20 Q. I'd like to know any. Dr. Graboff, do you 21 know any medical requirements for the operation of 22 commercial motor vehicles? 23 A. I know just the opposite. I know what 24 would preclude somebody from doing that kind of work, 25 but I do not know what the list of requirements are.</p>	<p style="text-align: right;">108</p> <p>1 helicopter pilots, aircraft industry. So I have 2 plenty of experience in dealing with truck drivers 3 and what their requirements are on paper to drive a 4 truck and what they do in reality to drive your 5 truck. Which may not be on paper, necessarily. But 6 from a medical standpoint, you don't necessarily have 7 to take into account the fact that there are listed 8 federal or state requirements for driving a truck. 9 You need to take into account the kinetics and the 10 effect on the injury and the treatment that was 11 provided and the future of the patient's injury and 12 where it will lead to if it's not prophylactically 13 protected. 14 And so from a medical standpoint, I have in 15 the past for many years in California when I was 16 doing QME work for the state, determined, and most 17 other orthopedic surgeons have done the same, that an 18 individual that's had this kind of a disk blowout and 19 injury with now two levels of disk pathology that's 20 progressive is not suitable for bouncing around in 21 the cab of a truck. Is not suitable for doing any 22 kind of long-term sitting, long-term driving. And 23 not being able to get up and move around every half 24 hour or 20 minutes as needed for relief and comfort. 25 And most patients with this kind of condition would</p>
<p style="text-align: right;">107</p> <p>1 Q. Okay. What do you think would preclude him 2 from doing that work? 3 A. Climbing, Number 1. Getting up into the 4 cab. Number 2, impact to the spine, sitting in the 5 seat. Any lifting requirements over 10 pounds, which 6 just common sense tells me if he's a truck driver, 7 there's going to be more than 10 pounds of lifting, 8 pushing, pulling, or comparable physical effort 9 required with his upper extremities. 10 Q. That's just common sense, though, but you 11 have no basis -- I mean, have you ever talked to a 12 truck driver about whether or not it's mandatory for 13 them to push, pull or do 10 pounds of lifting? 14 MR. THOMPSON: I would object. Here again, 15 Michael, you've interrupted him while he is still 16 providing a response. Just hold your horses and let 17 him finish. And then you can certainly follow up 18 with another question. 19 THE WITNESS: So from 1989 to 2017, I was 20 assigned by the State of California when I was 21 practicing in California to determine whether truck 22 drivers could go back to work driving trucks after 23 they had spinal injuries and spinal decompression 24 procedures, laminectomies, discectomies, fusions. I 25 did the same thing to the police department,</p>	<p style="text-align: right;">109</p> <p>1 be prophylactically precluded from truck driving, 2 regardless of what the standards say they may or may 3 not be able to do in their job or they have to do. 4 But from a medical standpoint, it's not good for 5 their condition. It's only going to make it worse. 6 Now, if you told me that the federal or 7 state guidelines for driving a truck means that he's 8 going to sit behind a desk and not bounce around and 9 he can get up and move around every 10, 15, 20 10 minutes as needed for comfort, yeah, he could drive a 11 truck. 12 BY MR. LESTER: 13 Q. Would it matter to you that a medical 14 examiner who's qualified under the FMCSR saw him 15 after the surgery in 2019 and said that he was 16 qualified to drive a truck? 17 MR. THOMPSON: Objection. 18 BY MR. LESTER: 19 Q. Medically qualified to drive a truck? 20 MR. THOMPSON: Under the Federal Motor 21 Carrier Safety Regulations. If you include that, I 22 won't object to the question. 23 MR. LESTER: I'll include it. 24 (Telephonic interruption) 25 //</p>

<p style="text-align: right;">110</p> <p>1 BY MR. LESTER:</p> <p>2 Q. Does that matter to you?</p> <p>3 A. It would not matter to me, no.</p> <p>4 Q. We talked about -- okay, so then we get</p> <p>5 into the restrictions that you've identified. That's</p> <p>6 the next one, two, three, four bullet points there.</p> <p>7 Do you see where I'm talking about?</p> <p>8 A. I do.</p> <p>9 Q. Do you agree with me that -- I guess let me</p> <p>10 ask a better question. Did these restrictions come</p> <p>11 from anywhere or are they all from your experience</p> <p>12 and expectations? As in -- and I'll ask one more</p> <p>13 better question just to clarify.</p> <p>14 Did you see these specific restrictions</p> <p>15 placed on him at any point by any of his treating</p> <p>16 providers?</p> <p>17 A. No. And you're talking about the specific</p> <p>18 restrictions that I opined on, correct?</p> <p>19 Q. That's the specific restrictions in bullet</p> <p>20 points seven, eight -- six, seven, eight, and nine on</p> <p>21 Page 11 of your report.</p> <p>22 A. What about 10?</p> <p>23 Q. We can add 10, sure.</p> <p>24 A. Yes, I didn't see anybody else give that</p> <p>25 degree of restriction.</p>	<p style="text-align: right;">112</p> <p>1 And I took it into account as part of my opinions.</p> <p>2 BY MR. LESTER:</p> <p>3 Q. Okay. Can you give me an explanation for</p> <p>4 why your restrictions are more narrow and allow him</p> <p>5 to do less than the restrictions placed on him by</p> <p>6 SERC and by his treating physician?</p> <p>7 MR. THOMPSON: Objection to the extent it's</p> <p>8 been asked and answered. He's explained this about</p> <p>9 an hour ago.</p> <p>10 BY MR. LESTER:</p> <p>11 Q. Uh-huh.</p> <p>12 A. Well, first of all, let me ask a rhetorical</p> <p>13 question to start my answer by saying, Would you want</p> <p>14 a man with this severe of damage to his spine, this</p> <p>15 amount of pain, and this amount of dysfunction</p> <p>16 driving a heavy truck heading towards you in the</p> <p>17 middle of the night? My answer would be no. Never.</p> <p>18 I wouldn't want this man on the road driving a</p> <p>19 commercial vehicle, period.</p> <p>20 What drives me to these opinions are,</p> <p>21 Number 1, I've seen patients, from start to finish in</p> <p>22 my career, starting off with his injury, and I've</p> <p>23 seen what happens to them over the course of 15, 20</p> <p>24 years as their spine has been damaged and it gets</p> <p>25 worse and degenerates. And the whole intent of the</p>
<p style="text-align: right;">111</p> <p>1 Q. Okay. You would agree with me that these</p> <p>2 are far more restrictive than any restrictions placed</p> <p>3 on him by his treating providers, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And you would agree with me that you did</p> <p>6 not actually go out and perform any tests to measure</p> <p>7 his capabilities or abilities to create these</p> <p>8 restrictions, correct?</p> <p>9 A. Correct.</p> <p>10 Q. You didn't speak with him to understand</p> <p>11 what he believes his own limitations are or read his</p> <p>12 deposition or anything like that, correct?</p> <p>13 A. That wouldn't matter to me. He's not a</p> <p>14 medical doctor. He doesn't know what the future</p> <p>15 holds. He can't predict what's going to happen to</p> <p>16 him in the future. Doesn't have that kind of</p> <p>17 knowledge, training or experience. So it wouldn't</p> <p>18 matter. But the answer to your question, no, I did</p> <p>19 not speak to him. But it's irrelevant.</p> <p>20 Q. And was the functional capacity exam also</p> <p>21 irrelevant?</p> <p>22 MR. THOMPSON: Objection. Argumentative.</p> <p>23 THE WITNESS: Functional capacity</p> <p>24 evaluation was interesting to read. It did show that</p> <p>25 he was impaired. But -- and it was not irrelevant.</p>	<p style="text-align: right;">113</p> <p>1 restrictions is to minimize the rapidity of which all</p> <p>2 this is going to take place.</p> <p>3 So there's two prongs to the restrictions.</p> <p>4 One is from a safety standpoint. Number 2 is a</p> <p>5 prophylactic standpoint, to try and prolong the</p> <p>6 inevitable as long as possible. Also from a safety</p> <p>7 standpoint. We don't want him to have a sudden numb</p> <p>8 leg, a sudden severe spasm of back pain while he's</p> <p>9 driving 65 miles an hour in his truck. It's a</p> <p>10 dangerous situation. So --</p> <p>11 BY MR. LESTER:</p> <p>12 Q. You --</p> <p>13 A. Let me just wrap it up by saying, it's a</p> <p>14 multifaceted reason from a medical standpoint with</p> <p>15 prophylaxis for the future because he can't see</p> <p>16 what's down the road. He's not a medical</p> <p>17 professional. He may say, Sure, I can drive my</p> <p>18 truck, I've got to feed my family. But he doesn't</p> <p>19 understand that if he does that, and he feels like he</p> <p>20 can do it now, he's only going to accelerate the</p> <p>21 damage and cause him to require more surgery, more</p> <p>22 treatment, a lot sooner than may be necessary.</p> <p>23 Q. Okay. You would agree with me that</p> <p>24 Dr. Bailey placed restrictions on him that would</p> <p>25 allow him to work in capacities that are not a</p>

<p style="text-align: right;">114</p> <p>1 commercial motor vehicle driver, correct?</p> <p>2 A. I'm not sure I know....</p> <p>3 Q. You were very focused in that response on</p> <p>4 whether or not he should be a commercial motor</p> <p>5 vehicle driver. There are other jobs in the world</p> <p>6 other than commercial motor vehicle driver, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And with the restrictions placed on him by</p> <p>9 Dr. Bailey, he could work more jobs than with the</p> <p>10 restrictions placed by you, fair?</p> <p>11 A. Hang on. I need to go back and see what</p> <p>12 Dr. Bailey's restriction was.</p> <p>13 Q. It was on Page 8 of your report. The</p> <p>14 paragraph starting, Furthermore, Dr. Poppa indicates</p> <p>15 that Mr. Stoneman....</p> <p>16 A. I thought you were talking about Bailey.</p> <p>17 Q. Yeah. Dr. Poppa -- I believe you have</p> <p>18 Dr. Poppa summarizing Dr. Bailey's opinions in your</p> <p>19 report. Mr. Stoneman was evaluated by the surgeon</p> <p>20 and placed on work restrictions.</p> <p>21 A. ,So evaluated by the surgeon. Work</p> <p>22 restrictions of light work, 20-pound lifting or</p> <p>23 carrying on an occasional basis, and to change</p> <p>24 positions, meaning sitting, standing, or walking,</p> <p>25 every two hours.</p>	<p style="text-align: right;">116</p> <p>1 And I don't agree that those are restrictive enough</p> <p>2 to prevent this man from all the things I was talking</p> <p>3 about before.</p> <p>4 Q. If Mr. Stoneman were to do the care and</p> <p>5 treatment that you have called for in your future</p> <p>6 medical care section, could any of these restrictions</p> <p>7 be lifted or changed or modified?</p> <p>8 A. No.</p> <p>9 Q. It's your position that no matter what he</p> <p>10 does, he will have these restrictions for the rest of</p> <p>11 his life?</p> <p>12 A. Correct.</p> <p>13 Q. I think I asked you earlier, but this</p> <p>14 report contains a complete list of all opinions you</p> <p>15 expect to offer at trial subject to if discovery</p> <p>16 reveals any facts?</p> <p>17 A. Correct.</p> <p>18 Q. How many cases have you been retained by</p> <p>19 Edelman & Thompson to give opinions on?</p> <p>20 A. Estimate, 15.</p> <p>21 Q. How many of those have been within the last</p> <p>22 five years?</p> <p>23 A. You've got that list there. I'm sure</p> <p>24 they're all on there.</p> <p>25 Q. Would you say every case that you've been</p>
<p style="text-align: right;">115</p> <p>1 Yes, there are other jobs than driving a</p> <p>2 truck that he could do that.</p> <p>3 Q. Yeah. And those restrictions are less</p> <p>4 restrictive on his work and employment future than</p> <p>5 what yours are. Fair enough?</p> <p>6 A. Yeah. Not that much. 10 more pounds</p> <p>7 difference in lifting. I have him mainly sedentary.</p> <p>8 He has him at light look work. Light work is the</p> <p>9 next level above sedentary. So we're not that far</p> <p>10 apart.</p> <p>11 Q. Do you agree with Dr. Bailey that plaintiff</p> <p>12 could perform light work?</p> <p>13 A. No, I believe in my opinions, the ones that</p> <p>14 I've given you.</p> <p>15 Q. Okay. So you would disagree with -- you</p> <p>16 believe that those restrictions aren't restrictive</p> <p>17 enough, fair?</p> <p>18 A. That's correct.</p> <p>19 Q. Same with if you look above on Page 8,</p> <p>20 you've got the restrictions from the SERC functional</p> <p>21 capacity exam. You would also say that those</p> <p>22 restrictions are not restrictive enough?</p> <p>23 A. I think we went through this before. And I</p> <p>24 told you I didn't understand exactly what they meant</p> <p>25 by those. But just the last bullet, I do understand.</p>	<p style="text-align: right;">117</p> <p>1 retained by Edelman & Thompson is on the testimony</p> <p>2 list that you've provided?</p> <p>3 A. No. Only the ones I've testified to.</p> <p>4 Q. Okay. Do you have any idea how much -- in</p> <p>5 the last five years, do you know how much money</p> <p>6 Edelman & Thompson has paid you for opinions?</p> <p>7 MR. THOMPSON: Objection. Objection. He's</p> <p>8 not paid for his opinion. He's paid for his time.</p> <p>9 BY MR. LESTER:</p> <p>10 Q. Sure. Do you have any idea just how much</p> <p>11 you've billed Edelman & Thompson for medical legal</p> <p>12 work on their cases?</p> <p>13 A. From a cumulative standpoint, no.</p> <p>14 Q. Have you ever turned down a case from</p> <p>15 Edelman & Thompson?</p> <p>16 A. I don't believe I have.</p> <p>17 Q. Have you ever had your testimony or</p> <p>18 opinions excluded or limited by a court before?</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. Have you ever provided a final report or</p> <p>21 given sworn testimony in a case you later learned</p> <p>22 would be -- was incorrect or wrong or needed to be</p> <p>23 changed?</p> <p>24 A. Not that I'm aware of, no.</p> <p>25 Q. Do you recall at the last deposition we</p>

<p>118</p> <p>1 discussed a report you offered on behalf of</p> <p>2 plaintiff, Derrick Houston, who was represented by</p> <p>3 Edelman & Thompson?</p> <p>4 A. I do.</p> <p>5 Q. Did you do anything to look up or find that</p> <p>6 report or remind yourself of that case following our</p> <p>7 discussion in April?</p> <p>8 A. I did.</p> <p>9 Q. Do you recall -- after you looked it up, do</p> <p>10 you recall Derrick Houston at all and the facts of</p> <p>11 that case?</p> <p>12 A. Only what I could find on the internet.</p> <p>13 But yes, a little bit.</p> <p>14 Q. What did you find on the internet?</p> <p>15 A. That he was injured in prison -- I don't</p> <p>16 have any file on him anymore, it's all gone. But</p> <p>17 that he was injured in prison, he had a severe spinal</p> <p>18 burst fracture. He had paraplegia. And that at some</p> <p>19 point ultimately after he settled his case out, he</p> <p>20 was captured on a video cam somewhere or a body</p> <p>21 camera walking.</p> <p>22 Q. Do you recall authoring a report in March</p> <p>23 of 2017 that testified that his paralysis was</p> <p>24 irreversible and permanent?</p> <p>25 MR. THOMPSON: I would object. First of</p>	<p>120</p> <p>1 My first question is: That's you,</p> <p>2 Dr. Graboff, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And do you have any reason to dispute the</p> <p>5 characterization that the court gave your report?</p> <p>6 A. No.</p> <p>7 Q. Is it your understanding that approximately</p> <p>8 a month after that report was drafted, Mr. Houston</p> <p>9 was in fact caught on camera walking?</p> <p>10 MR. THOMPSON: Well, I would object. That</p> <p>11 completely misstates the record in this case. And it</p> <p>12 misstates the record in the Houston case. And it</p> <p>13 misstates the record of when the report was issued.</p> <p>14 And it misstates the timeframes with respect to</p> <p>15 Derrick Houston. And it misstates or fails to</p> <p>16 include that Derrick Houston in the report was found</p> <p>17 to have been dishonest to his lawyers and dishonest</p> <p>18 to the medical providers and doctors who evaluated</p> <p>19 him. And it also -- it also misstates --</p> <p>20 MR. LESTER: I'll ask a different question.</p> <p>21 MR. THOMPSON: -- misstates the record in</p> <p>22 the context of the totality of this case. I happen</p> <p>23 to know this case fairly well, and I know the facts</p> <p>24 in the case.</p> <p>25 MR. LESTER: All right.</p>
<p>119</p> <p>1 all, he didn't testify to anything. He issued --</p> <p>2 MR. LESTER: It was a bad question. I'll</p> <p>3 rephrase, James. You're right.</p> <p>4 MR. THOMPSON: He issued a report.</p> <p>5 BY MR. LESTER:</p> <p>6 Q. Do you recall drafting a final report in</p> <p>7 that case that was used for settlement that stated</p> <p>8 that Mr. Houston's paralysis was irreversible and</p> <p>9 permanent?</p> <p>10 MR. THOMPSON: And I would object. That</p> <p>11 again misstates the record in this case. And in the</p> <p>12 Houston case.</p> <p>13 THE WITNESS: I do recall that I did a</p> <p>14 report in that case. I do recall identifying, after</p> <p>15 a comprehensive forensic analysis of that material</p> <p>16 provided to me, that patient with that kind of injury</p> <p>17 was consistent with being paraplegic.</p> <p>18 BY MR. LESTER:</p> <p>19 Q. Okay. This is the report and</p> <p>20 recommendation filed in the court, stamped and</p> <p>21 everything. It says, Dr. Graboff reviewed</p> <p>22 Mr. Houston's medical records and opined that the</p> <p>23 jail staff's delayed treatment of plaintiff's T2</p> <p>24 vertebrae caused his paralysis to become irreversible</p> <p>25 and permanent.</p>	<p>121</p> <p>1 BY MR. LESTER:</p> <p>2 Q. Let me just look at the report and</p> <p>3 recommendation, Dr. Graboff. It says, Defendant</p> <p>4 also had a March 2017 report authored by Steven R.</p> <p>5 Graboff, M.D. Do you have any reason to dispute that</p> <p>6 that was the March 2017 report?</p> <p>7 A. No.</p> <p>8 Q. On April 25th, 2017, officers of</p> <p>9 Columbia -- this is the summary of him being caught</p> <p>10 on camera, which occurred on April 25th, 2017. Do</p> <p>11 you have any reason to dispute that that's the date</p> <p>12 where Mr. Houston was caught on camera walking?</p> <p>13 A. No.</p> <p>14 Q. So we have, I said a month, I guess I'm not</p> <p>15 sure, maybe it was up to 60 days, but some time</p> <p>16 between March 2017 when your report was authored and</p> <p>17 April 25th, 2017 your opinion that his paralysis was,</p> <p>18 quote, irreversible and permanent, was -- became</p> <p>19 incorrect, correct?</p> <p>20 A. That's a really --</p> <p>21 MR. THOMPSON: I would object to the extent</p> <p>22 that Derrick Houston still has paralysis, as all of</p> <p>23 his -- as all his medical records indicate. His</p> <p>24 ability to ambulate is a different question.</p> <p>25 THE WITNESS: That's a complex question you</p>

<p style="text-align: right;">122</p> <p>1 just asked me. So here's my best answer to your 2 question, because I want to answer it for you. The 3 medical records and the radiology that was provided 4 to me to review in that case is 100 percent 5 consistent and medically probable of an individual 6 with an irreversible spinal cord injury due to a 7 burst fracture leading to paraplegia. I could review 8 those records 100 times and I would come to the same 9 forensic conclusion every single time I looked at 10 those records and radiology, that that patient had an 11 irreversible burst fracture with retropulsion of a 12 big chunk of bone into his spinal cord impaling his 13 spinal cord, leading to paraplegia. I think if you 14 showed that -- those medical records to 10 other 15 orthopedic surgeons, they'd all arrive at the same 16 conclusion. So regardless of whether this man 17 somehow is shown walking 60 days later would never 18 change my opinion based on the materials that I 19 forensically reviewed because they all are consistent 20 with and show an individual with a severe spinal cord 21 injury leading to paraplegia. 22 BY MR. LESTER: 23 Q. Do you believe that the records, that every 24 single forensic orthopedic surgeon looking at the 25 records would also come to the conclusion that the</p>	<p style="text-align: right;">124</p> <p>1 THE WITNESS: So the answer to your 2 question is, I don't agree with what you just said, 3 no. Even if I did not see a single medical record 4 that had any statements from Mr. Houston 5 whatsoever -- lying, truthful, irrelevant, if you 6 just showed me the MRI scan, CT-scan and x-ray of 7 Mr. Houston, and said to me, What would his medical 8 condition be, I would tell you that he would be a 9 high-level thoracic paraplegic based on the severe 10 burst fracture that he had. Without him saying a 11 word. So answer is no. 12 BY MR. LESTER: 13 Q. If the word that he said was, But I can 14 ambulate, would that then affect your opinion? 15 MR. THOMPSON: Objection. Incomplete 16 hypothetical. 17 BY MR. LESTER: 18 Q. If he walked up to you and told you, Oh, 19 no, that I can ambulate, would you still give the 20 same opinion? 21 A. If he -- if I actually saw him walk up to 22 me? And I saw -- then I would have to say that the 23 radiology that I was looking at did not belong to 24 Mr. Houston and that there's some funny business 25 going on here.</p>
<p style="text-align: right;">123</p> <p>1 paralysis was irreversible and permanent? 2 A. I'm not going to answer every single. I 3 would say the majority would. 4 MR. THOMPSON: How about every single 5 treating physician of Derrick Houston who agreed with 6 it? 7 THE WITNESS: I agree with that. Every 8 single treating physician did find that. 9 BY MR. LESTER: 10 Q. He then, of course, was able to ambulate at 11 a later date, correct? 12 A. Well, I don't know that for a fact. All I 13 know is what you're showing me and what I saw on the 14 internet on -- in some internet postings. I don't 15 know that medically, what he did. 16 Q. Fair enough. You would agree with me then 17 that it's possible that medical records that 100 18 percent pointed to one forensic outcome can be wrong 19 if a patient or plaintiff lies? Is that fair? 20 MR. THOMPSON: Objection. Incomplete 21 hypothetical. Fails to provide proper foundation for 22 this witness to formulate a response. If my 23 grandmother had wheels, she'd be a trolley car, you 24 know. And meteors hit the earth. It's a ridiculous 25 question.</p>	<p style="text-align: right;">125</p> <p>1 Q. So all I'm asking is -- I don't -- this is 2 not really trying to be a tricky questioning. It's 3 possible and you have had a case with Mr. Thompson 4 before where all of the medical records pointed to 5 one thing, and that one thing may not have been 6 correct; is that fair? 7 MR. THOMPSON: Incomplete hypothetical. 8 That one thing was correct. You don't understand the 9 medical in the Houston case, Michael. You simply 10 don't. 11 THE WITNESS: So I don't agree with you. 12 The medical opinion about Derrick Houston in my 13 opinion is 100 percent correct. It'll never change. 14 The only thing that would change is if somebody said, 15 you know what, we accidentally gave you the wrong 16 medical records. These don't belong to Mr. Houston. 17 They belong to somebody else. 18 MR. LESTER: Okay. 19 James, do you have any redirect? 20 MR. THOMPSON: Yeah, I have two questions. 21 Are you done? 22 MR. LESTER: Why don't you go? I'll look 23 at my notes, but I think I'm done. 24 25 //</p>

<p style="text-align: right;">126</p> <p>1 EXAMINATION</p> <p>2 BY MR. THOMPSON:</p> <p>3 Q. Doctor, I just have a -- really, one or two</p> <p>4 questions. Just clarify a couple things.</p> <p>5 A. You're showing me your notes.</p> <p>6 MR. LESTER: Oh, I'm sorry. Didn't realize</p> <p>7 I was still sharing.</p> <p>8 THE WITNESS: It's okay. I copied them</p> <p>9 all.</p> <p>10 BY MR. THOMPSON:</p> <p>11 Q. Doctor, I have just a few questions. You</p> <p>12 recall, both in terms of the records you reviewed and</p> <p>13 also your opinions that you've given today, that</p> <p>14 subsequent to Dr. Bailey's surgery, additional</p> <p>15 radiographic findings were obtained, right?</p> <p>16 A. Correct.</p> <p>17 Q. And those additional findings indicated a</p> <p>18 fragment, as you've explained, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And defense counsel wanted to make a big</p> <p>21 point about could that fragment have been just a</p> <p>22 fragment that had been left there in the original</p> <p>23 surgery and existed at all times, or could it have</p> <p>24 been an additional -- an additional herniation that</p> <p>25 created that fragment. Do you recall that line of</p>	<p style="text-align: right;">128</p> <p>1 fragments of this very large disk, which Dr. -- I</p> <p>2 just blanked on his name -- the surgeon removed at</p> <p>3 the time of the surgery -- Dr. Bailey -- he</p> <p>4 documented how large this was and how it was tenting</p> <p>5 or underneath the S1 nerve. So he removed all that.</p> <p>6 But what's left behind in the disk space is now</p> <p>7 damaged, softened, potentially fragmented,</p> <p>8 potentially torn, remaining disk material. Which is</p> <p>9 known to re-herniate. Is known -- there's nothing</p> <p>10 holding it together. So it can easily pop a piece</p> <p>11 out and re-herniate. And this is well-known since</p> <p>12 the disk is no longer fully contained by the</p> <p>13 surrounding membrane. There's nothing to really hold</p> <p>14 it together. It would be like, if we go back to the</p> <p>15 jelly doughnut scenario, if I removed one third of</p> <p>16 the jelly doughnut's skin, would it take much for</p> <p>17 more of the jelly to ooze out of the center onto the</p> <p>18 table top? No. Because there's nothing to hold it</p> <p>19 together. That's the same situation after the</p> <p>20 surgery.</p> <p>21 Q. Thank you, Doctor. I have no further</p> <p>22 questions.</p> <p>23 MR. LESTER: I have no further questions, I</p> <p>24 think.</p> <p>25 But just for the record, I didn't mark</p>
<p style="text-align: right;">127</p> <p>1 questioning?</p> <p>2 A. Yes.</p> <p>3 Q. And you've indicated it could be either</p> <p>4 scenario, correct?</p> <p>5 A. Correct.</p> <p>6 Q. But in either case, Doctor, is it your</p> <p>7 opinion, to a reasonable degree of medical certainty,</p> <p>8 that either scenario would have been caused by the</p> <p>9 original accident and injury in this case? In other</p> <p>10 words, if the fragment was simply left, was that</p> <p>11 caused or contributed to cause -- be caused by the</p> <p>12 accident? Do you have an opinion?</p> <p>13 A. I do. It was.</p> <p>14 Q. And let's say it was the result of an</p> <p>15 additional herniation. Would the pathophysiology</p> <p>16 that was created in the original injury at that disk</p> <p>17 level have led to that type of additional herniation?</p> <p>18 A. Yes, it would.</p> <p>19 Q. And can you explain in that setting why the</p> <p>20 original injury would have, more likely than not,</p> <p>21 been the causative agent for an additional</p> <p>22 herniation?</p> <p>23 A. Sure. So when you have a massive blowout</p> <p>24 of the disk at L5/S1 that occurred in this case, and</p> <p>25 then you have a surgeon go in and remove the</p>	<p style="text-align: right;">129</p> <p>1 everything in the file. I'm just going to mark the</p> <p>2 entire file as a whole as Exhibit 6. Unless you</p> <p>3 object, James.</p> <p>4 MR. THOMPSON: That's fine.</p> <p>5 (Whereupon, Exhibit No. 6 was designated</p> <p>6 for identification)</p> <p>7 MR. THOMPSON: All right. Thanks</p> <p>8 everybody.</p> <p>9 VIDEOGRAPHER: We're now going off the</p> <p>10 record. The time is 2:35.</p> <p>11 (Adjourned at 2:35 p.m.;</p> <p>signature waived by deponent)</p> <p>12</p> <p>13 oOo</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

REPORTER'S CERTIFICATION

I, CONNIE McCARTHY, a Certified Court Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the events of this cause, and that I am not related to any of the parties hereto.

DATED: November 6, 2021

Connie McCarthy, RMR, CRR
MO CCR 1435

STEVEN R. GRABOFF, M.D.

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